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THE
SOLICITORS' JOURNAL

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CURRENT TOPICS

Traffic: Major Changes Ahead

In theory on-the-spot ticket fines for certain car-parking offences are already with us. In fact s. 1 of the Road Traffic and Roads Improvement Act, 1960—relating to the fixed penalty procedure—has only been extended to the metropolitan stipendiary court area by the Fixed Penalty (Areas) Order, 1960 (S.I. 1960 No. 1598). Although this and allied orders and regulations came into operation yesterday, traffic wardens, upon whom the duty of enforcement will primarily rest, are not commencing work until Monday, when anyone keen to see them will be able to find them in the area of parking meter zones operated by Westminster City Council. Traffic wardens are authorised to operate the fixed penalty procedure (except in relation to the offences of obstruction and of leaving vehicles in dangerous positions under s. 16 of the Road Traffic Act, 1960, also excluded by the Fixed Penalty (Offences) Order, 1960 (S.I. 1960 No. 1599)), to act as parking attendants at certain places and as school-crossing patrols, by the Functions of Traffic Wardens Order, 1960 (S.I. 1960 No. 1582). Any motorist parking in the defined area is liable to become all too quickly familiar with traffic wardens and the fixed penalty procedure if he leaves or parks a vehicle on a road during the hours of darkness without adequate lights or reflectors, does not pay a charge due at a street parking place or commits a non-excluded offence through a vehicle waiting, or being left or parked, or being loaded or unloaded in a road. The Fixed Penalty (Procedure) Regulations, 1960 (S.I. 1960 No. 1600), prescribe the form of notice which is to be given to a person or affixed to a vehicle. This notice contains directions about paying a fixed penalty. The regulations also prescribe the justices' clerks to whom the fixed penalty is payable, and the procedure to be followed with respect to the payment. The Police (Grant) (No. 2) Order, 1960 (S.I. 1960 No. 1597), provides that sums received by a police authority in connection with its functions relating to traffic wardens are to be deducted from the gross expenditure of the police authority in reckoning its net expenditure for the purposes of the Exchequer grant payable to it. But we do not for one moment suppose that "fixed-fined" motorists could care less.

The Adoption Act, 1960

The Legitimacy Act, 1959, in repealing the provision of the Legitimacy Act, 1926, which made it impossible for a child whose mother or father was married to a third person at the time of its birth ever to be legitimated by the subsequent marriage of its parents, has removed a source of injustice to

CONTENTS

the many children born out of wedlock while their parents were awaiting the divorce which would make their marriage possible. Because they were fated to be permanently illegitimate, many of these children were adopted by both their parents after the parents were married, thus removing some of the worst disadvantages of illegitimacy. Now that these children are legitimated by operation of statute, their parents naturally want the adoption orders revoked and the records suitably amended. This was impossible until recently : the Adoption Act, 1958, s. 26, only made provision for revocation of an adoption order made in favour of the mother *or* the father of the child, not both. Now, under the Adoption Act, 1960, which received the Royal Assent on 29th July, 1960, this anomaly has been removed, and adoption orders made in favour of both parents may be revoked on the application of " any of the parties concerned." Any such revocation thereunder, or any revocation of an adoption order made under s. 26 of the Adoption Act, 1958, does not affect the operation of ss. 16 and 17 of that Act in relation to an intestacy which occurred, or a disposition which was made, before the revocation.

Liability for Lung Cancer

THERE have recently been two cases in the United States courts where smokers have sought to make tobacco firms liable for cancer contracted after many years of consumption of the firms' cigarettes. In one case there was held to be no evidence that the cancer had resulted from the smoking, but in a second case (*The Times*, 4th August, 1960) a Federal jury at Miami, Florida, held that the lung cancer from which the plaintiff's husband died had been caused by smoking " Lucky Strike " cigarettes. He had smoked between forty and sixty of these cigarettes daily for about thirty years before his cancer was diagnosed in 1956, and he died in 1958. In spite of this finding by the jury the manufacturers were not held to be liable, since they could not have known at the time that the cancer was being contracted of the danger that excessive smoking might cause the disease. It could be argued that they do not " know " of the danger even now, because medical opinion, although generally agreed that cigarette smoking and lung cancer are causally linked, is not completely unanimous. No doubt there will soon be examples of more recently-acquired cases of the disease before the courts, when perhaps it will be made clear at what point of time the manufacturers can be held to have known of the danger and therefore to have become liable for negligence in allowing the sale of the cigarettes. Fortunately for the Chancellor of the Exchequer, expert evidence in this country is likely to be sufficiently conflicting to make the continued sale of cigarettes worth while, at least for the present.

Waiver of Diplomatic Immunity

IN a recent case at London Sessions, after a member of the staff of the Indian High Commissioner had been found guilty of two offences arising out of the issue of a duplicate three-monthly railway season ticket, the deputy chairman, Mr. F. H. CASSELS, is reported to have said : " As far as diplomatic immunity is concerned it is a bit late to claim it. He must have waived it." It is clear that an ambassador who voluntarily appears to an action brought against him in this country and who thus submits to the jurisdiction of the court is not entitled to have the proceedings set aside, or the action stayed against him, on the ground of his diplomatic immunity or privilege (*Taylor* v. *Best* (1854), 14 C.B. 487), but it would seem that in the case of members of the ambassador's staff it must be shown that the government concerned, or its ambassador, consented to such waiver (*Re Republic of Bolivia Exploration Syndicate, Ltd.* [1914] 1 Ch. 139). Similarly, it is assumed that diplomatic immunity can be claimed by a member of a diplomatic staff on a criminal charge, but as this privilege is that of the ambassador and not of the individual by whom it is claimed it can be waived only by the ambassador or by the government of the foreign Power whom the ambassador represents : Archbold, Criminal Pleading, Evidence and Practice, 34th ed., p. 11. As far as members of the staff of the Indian High Commissioner are concerned, their position appears to be governed by s. 1 (1) (*b*) of the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act, 1952, which stipulates that such members of the official staff of a chief representative of a country or State to which the Act applies as are performing duties substantially corresponding to those performed by members of the official staff of an envoy of a foreign sovereign Power are " entitled to the like immunity from suit or legal process as is accorded to members of the official staff of such envoy." Section 1 (5) of the 1952 Act affirms that such immunity may be waived by a chief representative or a State representative and, in view of this and on principle, it may be wondered if the member of the High Commissioner's staff in question was himself able to waive such diplomatic immunity as he may have had. Newspaper reports record that after the jury had found the man guilty of the two offences the court communicated with the Indian High Commissioner, but they do not suggest that this communication led to any waiver of diplomatic immunity. If there is some doubt as to the position of the accused in such cases, it is obviously important that it should be clarified.

Whist Drives and Tombolas

THE Small Lotteries and Gaming Act, 1956, s. 4, legalises what its side note calls " small gaming parties," subject to certain conditions as to the amount of the stakes and prize-money and the destination of the profits. It has generally been considered that whist drives and tombolas which comply with these conditions are now legal, but there had been a doubt as to whether such functions were legal on their own or had to be subsidiary to a social evening or concert held at the same time. The reason for the doubt was that s. 4 refers to " any entertainment . . . at which games of chance or of chance and skill combined are played . . .," which suggests that there must be an " entertainment " of some nature as well as the game of chance. A Scottish court recently took this view and convicted the promoters of a tombola which had been held on its own, without any other " entertainment," but the High Court of Justiciary quashed the conviction (*Bow* v. *Heatley* [1960] S.L.T., Notes of Recent Decisions, 58). The court held that a whist drive or tombola is an entertainment in itself satisfying the terms of s. 4 ; one of the judges defined an entertainment as a gathering together or meeting of people to carry out or be present at some activity with a view to enjoying themselves. While we can feel that the convicting court gave a logical construction to the section, we also feel that the High Court of Justiciary have correctly interpreted the intention of Parliament to legalise small whist drives and tombolas held on their own and independently of any other activity.

EDUCATION OF SOLICITORS

THE proposed scheme of legal education and examinations announced in the current issue of the *Law Society's Gazette* and referred to in these columns last week (pp. 709 and 722), is a matter of paramount importance to all solicitors. Although there are bound to be some differences of opinion on matters of detail, the new scheme should receive a warm welcome as being a solution to what has become a very difficult problem and remedying a state of affairs which few will deny has become increasingly unsatisfactory in recent years.

Having attended the five-year course provided at The Law Society's School of Law in the pre-war days, and being privileged to have been an original member of the teaching staff there under the post-war scheme of tuition, a member of the Society of Public Teachers of Law (whose views were sought by the Council) and now an examiner for the Final Examination, the subject is of very great personal interest to me, but it must be emphasised that the views expressed in this article are personal to the writer and not, in any sense, official or inspired. With this background I would express the view that the new scheme is sound and practical, but there seem to me to be some important matters of detail requiring further consideration and possible alteration before the new regulations are promulgated.

A consideration of the new scheme involves two aspects. There is the examination system itself, and the method of educating the student for the examination. They are questions very much linked together. In many respects the question of legal education involves more practical difficulties than the examinations. The aim of legal education for solicitors must be a careful balance between the practical and the academic sides of law. This is very difficult because of the varying types of office in which articled clerks have to serve, their varying standards of academic education and the geographical distances involved in attending classes. The examinations, although of a practical character, must inevitably be a test largely of book knowledge, which in itself is a comparatively simple matter to arrange.

The provisional syllabus

Perfection in compiling a syllabus is hardly ever possible to achieve, and there are bound to be differences of opinion. These differences were recognised in the short discussion at the recent annual general meeting of The Law Society. It was stated that, whilst comment would be welcome, the inclusion of an additional subject in the syllabus involved the exclusion of something already in it. The syllabus probably has reached near-saturation point, and the inclusion of an additional subject might involve some difficulty but it may not be altogether impracticable. It depends surely on the extent of the knowledge required on any particular subject. The newly qualified solicitor should have the widest possible general knowledge of the law. It is for consideration therefore how far there may be a solution by reducing the extent of detailed knowledge required in some subjects, rather than excluding some altogether. The Qualifying Examination is to be split up into two parts. Part I provides very properly for the basic subjects of English law, and there is no choice of subject. In Part II, however, a candidate is to be allowed a limited choice of subject and it contains, I think, a surprise. The compulsory subjects are conveyancing, accounts, revenue law, commercial law, and family law. Obviously, these are essential subjects which every solicitor must know about. In addition, a candidate will be required to pass in one of the following subjects: succession, local government law or magisterial law. Whilst the two last mentioned can properly be regarded as specialist subjects, it does seem surprising that such matters as wills and probate should be treated as an optional subject. Having spent most of my professional life in law offices reckoning to specialise in company, commercial and revenue law, it has been my experience that, even so, there are many occasions when a knowledge of the law of succession has been required, both directly and indirectly, when dealing with the affairs of individuals. Even in such specialised law practices, one is not concerned exclusively with corporate clients! It does seem to me that the important topic of wills and kindred matters should not be relegated to being an optional subject. A practical alternative might take the following form.

Land law and equity are compulsory subjects in Part I of the Qualifying Examination. The standard works on land law contain chapters on wills and succession. Would it not be possible therefore to expand the syllabus of land law so as to include the basic principles of will-making and succession? Likewise the administration of estates is normally dealt with in text-books on equity and so could be included in the equity paper. This should not involve the student in an undue increase of reading. As a side issue to this question of succession being treated as an optional subject, it is interesting to note that revenue law (a compulsory subject) still includes estate duty, and it seems odd that if a candidate is not required to study succession, he should be required to study estate duty compulsorily.

Company law

Another important change, as a result of the new syllabus, will be the treatment of company law. Hitherto, company law has been a separate paper for the Final Examination and such matters as sale of goods, hire purchase and negotiable instruments have been included in an optional paper. In the new syllabus there is provision for a paper on commercial law, which is to include company law. There is a note to the syllabus which indicates that the questions set in this paper will not go beyond the scope of a text-book to be selected. In most text-books on commercial and mercantile law the subject of company law receives only a comparatively short treatment in line with all the other various topics. As company law probably is far more important in the average solicitor's practice than some of the other items of commercial law, it is to be hoped that company law will be given a full measure of treatment under the new system.

One of the most interesting items in the new syllabus is the subject of accounts, which, incidentally, will now be dealt with in Part II of the Qualifying Examination, instead of coming, as at present, early in the course of studies in the Intermediate Examination. The more important point, however, is that the subject of accounts is to be expanded so as to deal in more detail with the valuation of shares and other matters and general financial " know-how." This is welcome indeed and will go a long way to remove the criticism that solicitors are in danger of losing their position of men of affairs, so that some classes of work have tended to pass out of solicitors' hands elsewhere.

It is satisfactory to note that revenue law under the new system, whilst still having no detailed syllabus, will continue to have the two excellent small books on income tax and estate duty prescribed as at present. Furthermore, the

book on income tax is to contain a chapter on profits tax. Another helpful feature of the new syllabus is that there is a much clearer directive on the extent of the questions to be set on the complicated subject of stamp duties. Nevertheless, it is for consideration perhaps whether so detailed a knowledge as is contained in the text-book mentioned in the syllabus is really required. Bearing in mind the importance nowadays of tax planning, involving as it does the consideration of several revenue subjects in a single transaction if a client's interests are to be best served, it is wondered whether it would be feasible to have one book by the same learned authors incorporating the four subjects of revenue law, so that the aspect of tax planning could be specially treated.

What of the topics not included in the syllabus? The subjects of bankruptcy, patents and copyright, for example, do not seem to appear anywhere. Admittedly, they are somewhat specialised, but it is suggested that the elements of these subjects should be known and perhaps they could be included conveniently in the syllabus for commercial law and in the text-book which is to be selected.

Education

Turning now to what is possibly the more difficult problem of the educational system, there are several important changes contemplated. The proposals may be likened to the theme of a popular radio musical programme, involving as they do "old ones, new ones, loved ones, neglected ones . . ."

The system of legal education provided by The Law Society both in pre-war days and in the post-war era has constantly been criticised. In both instances many of the critics have not recognised the tremendous practical difficulties facing the authorities. The Society's pre-war School of Law, under most distinguished leadership over the several decades, had a very high academic reputation. It was liked too by those who took full advantage of the lectures, classes, moots, and other facilities provided. There were more barristers than solicitors on the staff and there was some criticism that the teaching was not sufficiently directed towards examination preparation. Attendance was on a part-time basis. The geographical problem, already alluded to, meant that only a small number of articled clerks in the central London area and Home Counties could conveniently attend. The result was that only a very small number of students comparatively took part in the courses for the Final Examination. This brought about the criticism that the teaching provided, effectively, only for the Intermediate Examination.

The system operating since 1945 has been entirely different. It has provided for whole-time courses for the Intermediate and Final Examination of five and six months' duration respectively. Undoubtedly, as a means of tuition for the examination, it has been a definite improvement on the old scheme and has obviated, in most cases, the need of the student to attend a pre-examination intensive course with private tutors.

The new proposals will involve (except in the case of law graduates and certain other categories of student) compulsory attendance at law classes at a course at a recognised law school in preparation for Part I only of the Qualifying Examination. A course lasting about one year is to be provided at the Society's School in London and it may be that similar courses will be made available at certain provincial centres also. It is odd, perhaps, that a person who has taken a university degree, even though not a law degree, should not be required to attend at the Law School, but doubtless his requirements will be catered for by private law tutors. No further details about this course for Part I of the Qualifying Examination are available at present.

Course before Articles

One of the best features of the pre-war scheme at The Law Society's School in London was undoubtedly the Course before Articles. It was whole-time for a year and provided a most excellent introduction to the law for the young man just having left school. It had the merit, too, of providing a young man with an opportunity of deciding after a short time whether he wished to pursue a law career or not, before actual entry into formal apprenticeship. The Course before Articles was not continued under the post-war scheme, and its abolition always seemed to me to be a retrograde step. It is to be hoped that the best features of the old system of the Course before Articles will be incorporated in the new scheme.

It is convenient perhaps, at this point, to refer to the question of staffing the Society's School. It is important that every effort should be made to staff this and similar schools with solicitors, rather than barristers. Also, it is to be hoped that some of the staff, at any rate, will be drawn from the ranks of older solicitors who have spent some years in practice. The young student oftens needs advice on matters generally in relation to his career, as distinct from mere technical tuition. It is understood that the Society has experienced considerable difficulty in this matter of staffing its present school, at any rate as regards whole-time staff. It may be that a solution is to employ at least some part-time solicitor staff, but employment of lecturers on a part-time basis did involve some difficulty in the pre-war days. However, that was probably due to the majority being barristers, whose court engagements were often in conflict with their lecturing engagements. The difficulty should not be so great with solicitors.

The Law Society should make a special effort to recruit adequate suitable teaching staff. It may be that volunteers from the ranks of practising solicitors should be called for and, especially, solicitors who have a flair for this kind of work and a vocation for it. It is indeed a vital work and one upon which the well being of the future of the solicitors' branch of the legal profession much depends.

The other notable change in the new proposals is that it is not intended to provide for attendance at a law school in preparation for Part II of the Qualifying Examination. This seems a gap in the scheme, but practically no inconvenience may result as there will be available suitable tuition from the private law tutors. Although there may not be any compulsory law school attendance for Part II, it is to be hoped that The Law Society will provide on a voluntary basis for a full advisory service and guidance on reading, some lectures on practical subjects, and, perhaps, an organised correspondence course. This would be helpful and beneficial to articled clerks, whether or not they attend a private law tutor ultimately for intensive preparation for the final portion of the Qualifying Examination.

The above changes will not become effective until 1st January, 1963. The new scheme and all its implications will require a good deal of further consideration and it will be interesting to note the reactions to it of solicitors up and down the country. Doubtless there will be some lively controversy which can be awaited with interest. It is to be hoped that it will be confined to matters of detail because it does seem that the new scheme, as a whole, should be allowed to go forward without delay.

B. J. Sims.

THE BUILDING SOCIETIES ACT, 1960

BUILDING societies have occasionally been used for unscrupulous purposes because they are efficient organisations for the collection of large sums of money from the investing public. The main object of the new Act is to ensure that such money is used, broadly, for the traditional purpose of building societies—making modest advances on owner-occupied houses. Of course, the Act also deals with many other matters, and in fact has turned out to be a measure, in the alarmingly ample modern tradition, of seventy-seven sections and six Schedules. It comes into force on 1st October, 1960, but different portions will actually take practical effect at different times. Some of these times will be noted in what follows, but any practitioner with a client building society will need to make his own timetable of the requirements of the Act *vis-à-vis* that society because of societies' differing year-ends.

The special advance

The heart of the Act is ss. 1 and 2, the sections designed to restrict the type of mortgage advances building societies may make. Section 1 (1) introduces the concept of a "special advance." This means an advance of any amount to a body corporate; or an advance exceeding £5,000 other than to a body corporate; or an advance other than to a body corporate which brings over £5,000 the indebtedness to the society of the person to whom the advance is made. At the end of each financial year a society is to calculate the proportion its outstanding special advances bears to its total outstanding advances. If that proportion does not exceed 10 per cent. the society may during the ensuing financial year make special advances up to 10 per cent. of its total advances for that year. If the proportion exceeds 10 per cent. and not 25 per cent. the society may similarly make up to 2½ per cent. special advances. If the proportion exceeds 25 per cent. the society may not make any special advances at all.

There are a few provisions mitigating the severity of this formula (though "severity" is a relative term, for no reputable society will be incommoded by these sections). For instance, the calculation of the amount owing by a private person must for this purpose be made both immediately following the advance to him and three months thereafter (or at the end of the society's current financial year, whichever is the sooner). If the first calculation does not exceed £10,000 and the second calculation does not exceed £5,000, then the advance is not a special advance. Generous provision is thus made for any normal time lag between a person buying a new house and selling his old one. Again, the Chief Registrar of Friendly Societies (called "the Registrar" below) may in certain circumstances authorise the limit of special advances to be exceeded for the purpose of financing new houses or flats for letting (s. 2). He may also by statutory instrument increase the £5,000 used in defining "special advance."

The above provisions operate so as to restrict special advances made in a society's first financial year beginning after 1st October, 1960.

Valuations

The other main protective provision in connection with mortgage advances concerns the valuation of the security. This was the matter which roused most passion in building society circles at the Bill stage and s. 14 is different indeed from the corresponding clause when the Bill was first introduced into the Lords.

The law on this subject was previously contained in s. 12 of the Building Societies Act, 1939, which laid upon building society directors the duty of arranging that valuations should be made by suitably qualified persons and that records should be kept, but which specifically provided that a director could himself make a valuation. All this has now changed. Section 14 distinguishes between assessing the adequacy of the security and reporting as to the value of a security. Directors must arrange that such assessment is made by themselves or one of their number or by a competent officer of the society, and that a report as to the value of any freehold or leasehold estate comprised in the security is available to the person making the assessment. The report must be in writing, prepared and signed by a competent and experienced person, who must not be disqualified under subs. (2) or (3) of the section.

The following are disqualified from reporting:—

1. A director, or the manager or secretary of the society, except that for ten years after the commencement of the Act a person who has been such a director or manager or secretary at all times since such commencement may report if he is authorised to do so by special resolution at successive annual general meetings beginning with that to be held after the end of 1960.

2. A person who has received commission from the society for introducing the applicant for the advance on the security in question.

3. The vendor of the security in question, or other person entitled in whole or in part to the proceeds of sale, including a person receiving a commission or gift for introducing the parties to the sale and purchase, e.g., the estate agent acting for the vendor.

Investments

Under the old law a society could invest its surplus funds in any trustee security. By s. 11 of the new Act it may only invest them in securities prescribed by the Registrar with the approval of the Treasury, and must keep its surplus funds not so invested in a bank authorised by the Registrar with Treasury approval. The Economic Secretary to the Treasury has indicated (Hansard, 29th July, and see p. 646, *ante*) the scope of the proposed regulations under s. 11, which will operate from 1st January, 1961. Very broadly speaking, until a society's investments exceed 7½ per cent. of its total assets it will be confined to investing in Government, Commonwealth and local authority securities repayable within five years. When the 7½ per cent. is exceeded, further investments may be made in fifteen-year securities. When investments in these two classes exceed 15 per cent., twenty-five-year securities become eligible. It is understood that the authorised banks will be the clearing banks and the trustee savings banks. In this way the unhappy experiences of certain societies with such securities as "Daltons" will be avoided in the future, as will "banking" with certain trading "banks." It should also be noted that under s. 12 the Registrar may with Treasury consent authorise a society to lend money to a British or Northern Irish building society which is in financial difficulties—previously a society has not had power to invest in another society.

A society may retain its existing investments (other than deposits in unauthorised banks, which it will have to withdraw

within three months of 1st January, 1961, or as soon thereafter as possible), provided, of course, they were authorised under the previous law.

So far we have been dealing with the provisions of the new Act which control societies in the conduct of their business. We must now turn briefly to some of the very considerable powers of control over societies given by the Act to the Registrar. These may be considered in relation to societies generally, to societies in difficulties, and to small societies.

Section 10 gives the Registrar power, with Treasury consent, to make regulations by statutory instrument as to the form and matter of all "communications" issued by a society, and in particular its advertisements and invitations to invest. The regulations may require advertisements to include particular information, may require advertisements in public places to be withdrawn, and may make different provision for different cases.

Societies in difficulties

Where the Registrar considers it expedient in the interest of potential investors, he may, with Treasury consent, give notice to a society prohibiting all or certain advertisements, or requiring displayed advertisements to be withdrawn. Such a society is to be given a week's notice of the Registrar's intention in this regard and may make representations to him in the meantime (s. 7).

In similar circumstances, the Registrar may, with Treasury consent, make an order prohibiting a society from accepting investments at all. Here the society is to have a fourteen-day notice of the Registrar's intention, with a similar right to make representations (s. 6).

If the Registrar considers it necessary for the exercise of his powers under the two foregoing sections he may by notice require production of the society's books, accounts, deeds, etc., from any person (s. 8).

These provisions go a good deal further than s. 11 of the Prevention of Fraud (Investments) Act, 1958 (which the present Act repeals, except as respects orders in force under that section on 1st October, 1960), and should enable the Registrar to act promptly and effectively in the case of unsound societies.

Small societies

The evil of the parochial society being improperly used for money-raising purposes by outsiders is dealt with by s. 9. A society whose assets do not exceed £100,000 which changes, or is arranging to change, the scale or character of its operations may be forbidden to raise money or to advertise unless its directors hold shares of £5,000 or more, paid in cash, on the terms mentioned in the next paragraph.

New societies

Sections 3 and 4 require a minimum of ten founding members (the previous number was three) for a new society and they must each take up shares for cash to the value of £500 on the restrictive terms as to withdrawal and otherwise of the First Schedule to the Act. A new society may not advertise until it has satisfied the provisions as to special advances, liquidity, and otherwise contained in the Second Schedule (s. 5).

Internal affairs

Much of what has already been discussed will not affect the operations of the normally-run building society and for such a society the parts of the Act of greatest concern will be those affecting its internal machinery. Though building societies differ in many vital respects from joint stock companies, it was perhaps inevitable that sooner or later many provisions akin to those governing companies would come to be applied to building societies. This has been done by the new Act. Within the scope of this article it is possible only to outline the most important of these provisions.

A building society must now keep a register of its members' names and addresses (no special form is prescribed—see s. 66) but it is only to be open to inspection by a member where, broadly, the society is in financial difficulty or where the member satisfies the Registrar that he wants to communicate with other members in connection with the society's affairs and in the interests of the whole membership (s. 27).

Section 29 defines a "special resolution" and s. 30 provides for the circulation of members' special resolutions. Under s. 31 a special resolution so defined is required for alteration of the rules, change of name, winding up, and approval of a union of societies and of a transfer of engagements. Since on a special resolution all members may vote except (if the rules provide) members holding shares less than £1 in value, some societies may like to consider altering their rules before 1st October.

A society's rules must provide for certain matters relating to the calling and holding of meetings (s. 32 (1)). If they do not and they are not appropriately altered within fifteen months from 1st October, 1960, the appropriate provisions of the Fourth Schedule are to apply in respect of any of the aforesaid certain matters not dealt with by the rules. Since the Fourth Schedule is quite stringent, societies whose rules do not comply with s. 32 (1) will want to put in hand the necessary alterations at once.

Accounts

The Act revolutionises the form and circulation of a society's accounts. The old form of Annual Account and Statement (Form A.R. 11) has gone. So far as the members are concerned, they are to have a revenue and appropriation account and a balance sheet laid before them at the annual general meeting. Where a balance sheet is issued, circulated or published (and every member holding £25 or more in shares must be sent one), it is to be accompanied by the revenue and appropriation account and by reports by the directors and auditors as to certain prescribed matters. The Act also contains provisions as to the keeping of proper books and the appointment and qualifications of auditors. All these matters are to be found in ss. 38 to 49.

The Registrar is to receive not only the documents referred to in the previous paragraph (which are also by s. 25 to be given to every new investor) but also an "annual return" in a form to be prescribed by him with Treasury consent in a statutory instrument (s. 50).

Miscellaneous

One or two points of interest may be singled out from the several with which this article has been unable to deal. Certain charges by local authorities are not to rank as "prior mortgages" for the purpose of s. 13 (1) of the Building Societies Act, 1894 (s. 17 and Third Schedule). The form of vacating receipt under s. 42 of the Building Societies Act, 1874, has been changed to provide for its sealing to be countersigned by any person so authorised by the society's board and not merely by the secretary or manager (s. 20). The sum validly repayable to the next of kin of intestate

investors without production of letters of administration is increased from £50 to £100 in respect of persons dying after 1st October, 1960 (s. 23). By s. 16 some of the restrictive provisions governing "continuing arrangements" (contained in ss. 2 (4) and 6 of the Building Societies Act, 1939) are relaxed.

It will be seen that as well as creating much new law the Act has made considerable changes in the previous statutes affecting building societies. A consolidating Act is believed to be under consideration, and one hopes, for the efficient conduct of societies and the convenience of lawyers, that it will not be long delayed.

R. B. FULLER.

LEASEHOLD INTERESTS AND NOTICE TO TREAT

SOME confusion in the law relating to compensation on compulsory purchase may be caused by the recent decision in the case of *Holloway* v. *Dover Corporation* [1960] 1 W.L.R. 604; p. 466, *ante*. The facts of the case were briefly these. The Dover Corporation made a compulsory purchase order called the Borough of Dover (Central Area No. 1) Compulsory Purchase Order, 1949, which was confirmed by the Minister of Town and Country Planning on 8th February, 1949. As the order provided for expedited completion it was accepted that notice to treat was deemed to have been served on all persons interested in the property in question on 11th February, 1949. Among these properties was Hopper's Bakery. The freehold was vested in G. W. Chitty & Co., Ltd., and the leasehold in a Mrs. Holloway. The leasehold interest at the time had five and a half years to run. This period ended on 11th October, 1954, without any action having been taken to determine the compensation payable. Under the Landlord and Tenant Act, 1954, the lessee could remain after this date but was subject to six months' notice to quit. On receipt of the notice, the lessee could ask for a new lease which the court could grant on such terms as they thought fit in relation to rent and other matters. The landlord, however, was entitled to object to a new lease on certain grounds including that the property was to be substantially demolished or reconstructed. On 21st March, 1957, the bakery made a claim for compensation against the corporation for £440 profit rental and £2,345 goodwill and loss on forced sale. This claim was never accepted as valid by the corporation. In fact, on 16th May, 1957, the corporation caused the freehold to be vested in themselves and as landlords in place of G. W. Chitty & Co., Ltd., served notice to quit in October, 1957, to end the lease on 11th October, 1958. The lessees then put in a claim for a new lease but, having regard no doubt to the proposals of the corporation to demolish the premises, they indicated that in accordance with s. 37 of the Landlord and Tenant Act, 1954, they were prepared to accept compensation of twice the rateable value (the proper compensation where a new lease was not possible because the owner intended to demolish). This was without prejudice to any claim they might have in relation to the acquisition of their interest on compulsory purchase of the land.

Question at issue

The question at issue in *Holloway* v. *Dover Corporation* was whether the lessees had any claim having regard to the fact that by the time the case reached the Lands Tribunal their interest had ended, although, at the time of the notice to treat, five and a half years of the lease had still to run. The Lands Tribunal thought that the relevant date was that of the notice to treat, namely, 11th February, 1949, but this was not accepted by the Court of Appeal. They considered that the case was indistinguishable from *R.* v. *Kennedy* [1893] 1 Q.B. 533, where a railway company served notice to treat on a Captain North but did not enter, until after the landlord (who happened to be the Crown) had given the lessee three months' notice to terminate his tenancy. The court decided that the relevant date for fixing the compensation was not the date of notice to treat, but the date of taking possession after the notice to quit had been given, when a bare two months' tenure remained to the lessee.

Effect of notice to treat

From the view taken by the Lands Tribunal it will be readily seen that some uncertainty has existed as to the precise effect of the notice to treat. It is generally accepted that a notice to treat by itself does not create a contract of sale and the land remains the property of the owner in law and in equity (*Haynes* v. *Haynes* (1861), 1 Dr. & Sm. 426). But it has the effect of creating a relationship analogous to vendor and purchaser, giving each party the right to have compensation settled unless the notice to treat has been withdrawn (*Tiverton and N. Devon Railway* v. *Loosemore* (1884), 9 App. Cas. 480). The owner after service of notice to treat cannot increase the burden of compensation in the land included in the notice by creating a new interest. In addition to this it has to date been thought that compensation is to be assessed as at the date of notice to treat, subject, of course, to any such statutory modifications as are provided by the Acquisition of Land (Authorisation Procedure) Act, 1946, Sched. II, Pt. III, which reads as follows:—

> 8. The arbitrator shall not take into account any interest in land, or any enhancement of the value of any interest in land by reason of any building erected, work done or improvement or alteration made, whether on the land purchased or on any other land with which the claimant is, or was at the time of the erection, doing or making of the building, works, improvement or alteration, directly or indirectly concerned, if the arbitrator is satisfied that the creation of the interest, the erection of the building, the doing of the work, the making of the improvement or the alteration, as the case may be, was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

Points raised by *Holloway* v. *Dover Corporation*

The decision in *Holloway* v. *Dover Corporation* raises a number of important points. Is the decision limited to saying that, if an interest has ceased to exist before compensation is assessed, then the position should be reviewed at the time compensation is fixed rather than at the time of notice to treat; or does it apply to alter the basis of values if owing to delay in settlement these have altered? If the latter is the case there may be interesting repercussions. If land which has a residential use at the date of notice to treat acquires an industrial user by the time settlement of compensation is fixed this will lead to increased compensation. If the basis of valuation is not related to the date of notice to treat then those who do not readily agree compensation may gain, by reason of increase in values, against those who negotiate their price quickly. The 1954 values of land, for example, are not equivalent to those of 1960.

The decision of the Court of Appeal has left it very uncertain as to how precisely the lessee's position is to be ascertained. In *R.* v. *Kennedy* the date applicable was when the railway company took possession. In *Holloway* v. *Dover Corporation* two dates were given, namely, when the case came before the Lands Tribunal, and 21st March, 1957, the date on which the bakery company put in their claim. Lord Evershed, M.R., puts the case as follows (at p. 610) :—

> "The position in the end of all seems to me plain and incontrovertible, namely, that when the powers and jurisdiction of the Lands Tribunal were invoked it had become quite clear that no proprietary right of the claimants had been compulsorily acquired by the corporation, and, therefore, there was no subject-matter for which the corporation were liable to pay to the claimants any compensation. That seems to me the common sense of it, and nothing that [counsel] in his careful argument has adduced has satisfied me that there is any answer to it. The same, in effect, is no less true at the date when the claim was put forward, because at that time (in 1957) the only right which the claimants had was a right to continue in possession until they were served with a notice to quit. That was a right which they enjoyed apart altogether from the Acquisition of Land Act, but which again had not been affected by anything that the corporation had done."

Conclusion

However, with respect, there does appear to be a distinction between the two dates because, while at the time when the case came before the Lands Tribunal the rights of the lessees had ceased, at the time the lessees sent in their claim there was no suggestion that the former landlord, who was still the owner, was prepared to give notice, and it was doubtful whether he could in fact obtain possession having regard to the lessees' right to apply for a new lease. The former landlord of course did not himself wish to demolish. It seems strange that there is considered to be no value in the "right to continue in possession until they were served with a notice to quit," having regard to the elaborate provisions for compensating minor tenants contained in s. 121 of the Lands Clauses Consolidation Act, 1845. It seems hard that tenants who might well have defied the former landlord's efforts to remove them should be limited to merely double the rateable value as their total compensation under both the Landlord and Tenant Act, 1954, and the compulsory purchase procedure.

From the local authority's viewpoint the case illustrates how there may be a practical advantage, in cases of purchases involving freehold and leasehold interests, in acquiring the freehold and endeavouring to terminate the leasehold interest before compensation is settled. For the lessee it points out the advantage of not delaying settlement once notice to treat is served.

R. P. C.

Country Practice

ECCLESIASTICAL LORE

In a smaller community, the Church, Medicine and the Law seem rather closer together than in a biggish city. In our little town, an Olympic sprinter could start at the parish church, pass the solicitor's office, note the Preacher for Next Sunday at the Methodist Chapel and reach the doctor's waiting room in ten seconds dead. This has never actually been attempted, but nevertheless I throw out a challenge to any large city to provide a faster course linking the three professions.

My recollection of life in an industrial city suggests that there the professions may be farther apart in other ways. Anyone with a problem beyond a normal solicitor's experience could be referred to the Citizens' Advice Bureau, or a welfare officer. From there the client could be referred to someone else—the assistance board, maybe, or the mobile psychiatric unit ; and, all being well, one never saw him again. But in country places you live with your client. The chances are you know which church he attends, or does not attend ; and you will certainly know his doctor.

There is nobody to whom a country dweller can turn for immediate professional advice other than his doctor, his lawyer and his priest. A chartered accountant and a dentist attend once a week on market days ; but a problem too complex for the countryman to solve for himself can only be solved locally by calling to see the doctor, the lawyer or the priest. The doctor hopes to care for the body, the priest, if he is allowed, may do something for the soul, and the lawyer has a go at the social relationships. (That's what law is all about.)

The overlapping between medicine and law is fairly obvious ; but not so obvious nowadays is overlapping of religion and law. Forensic religion has no place in legal education. All the same, there are times when the lawyer and the priest can usefully work together. For C. of E. readers only, hands up those who can repeat what the Book of Common Prayer has to say about making wills.

What led me to think about churches and suchlike was the outbreak of road-widening activity. In one case, a Friends' Meeting House stood in the way of faster traffic. The meeting house stands almost deserted by the roadside in an empty valley, and my correspondence with the county council became so complicated that I had to see some of the leading Quakers. (Where a compulsory purchase is pending, what value is to be placed on a disused meeting house ? How is the value affected by the presence of upwards of two hundred deceased nonconformists in the adjoining graveyard, and state briefly the procedure for reinterment.) I met an aged Friend who remembered the meeting house as it was fifty years ago. A letter to a neighbouring farmer would cause handwritten posters to appear on trees and signposts up and down the lonely valley. The great night would arrive, and to a packed house an oil-fired magic lantern show would be provided. Nowadays, practically every house has its television, and the meeting house is only opened once a year for harvest thanksgiving.

The other case concerns a denomination which shall remain nameless ; the full story could be gleaned only from a dusty old file. It seems that, in 1940, the Local Defence Volunteers saw the tactical possibilities of the place ; and later, when the L.D.V. became transformed into the Home Guard, some atheistic commander had levered stones out of the churchyard wall so that his platoon could see without being seen. Unfortunately the loopholed and crenellated wall did not stand up very well to this treatment ; part of the wall fell

down; solicitors' letters ensued, and compensation was paid through the appropriate channels.

Before the wall could be restored, a divisional commander happened to pass by. He, too, saw the tactical possibilities. Strong points and tank traps were then fashionable, and in a short while a tank-proof obstacle—namely, a stone wall, three feet thick—was erected on the site of the original wall. Naturally, this incursion gave rise to solicitors' letters, and compensation was paid through the appropriate channels.

As I have mentioned, there has been an outbreak of road-widening activity, and the three-foot-thick churchyard wall must go. Compensation will, of course, be paid through the appropriate channels.

For fund-raising schemes, consult your solicitor.

"HIGHFIELD."

RECOGNITION OF FOREIGN LAW: THE GREEK BANK CASE

IN *Adams and Others* v. *National Bank of Greece S.A.* [1960] 3 W.L.R. 8; p. 489, *ante*, the House of Lords considered an interesting sequel to their lordships' earlier decision in *National Bank of Greece and Athens S.A.* v. *Metliss* [1958] A.C. 509; the judgments in the *Adams* case are of considerable importance in several fields of the conflict of laws—notably in relation to the doctrines of domicile, *successio in universum jus* and the circumstances in which the recognition of foreign law may be withheld by an English court. Both cases were concerned with the rights of holders of parts of an issue in 1927 of £2m. 7 per cent. sterling mortgage bonds; this issue was repayable as to principal in 1957 and the bonds were unconditionally guaranteed as to principal and interest by the National Bank of Greece (the "old" bank), which was dissolved in 1953. At that date the Greek Government passed a law (Act No. 2292) relating to the amalgamation of banking corporations and the "old" bank was amalgamated with another company, the Bank of Athens, the two together forming the respondent bank. Section 4 of the 1953 Act provided:—

> "... The company which absorbs another company by merger, or the new company, formed by the amalgamation, becomes the universal successor to the rights and obligations in general of the amalgamated companies, without any other formality or act whatsoever."

The *Metliss* case

In the *Metliss* case, by proceedings instituted in December, 1955, a bondholder claimed arrears of interest against the respondent bank; it was established that payment of interest had ceased when Greece was occupied in 1941, and that since the war a Greek moratorium had been in force which would certainly have been a good defence to any action brought by Metliss (or, for that matter, by Adams) within Greece itself. However, their lordships were quite clear in *Metliss* that the bondholder enjoyed a right in England that was unaffected by the moratorium; Metliss had acquired an English right by operation of English law, which was the proper law of the contracts. Furthermore, their lordships were satisfied that the effect of the amalgamation of the banks brought about by the operation of Greek Act No. 2292 was such as to make the respondent bank the "universal successor" to both the rights and liabilities of its predecessors; it was therefore able to be sued in England in respect of obligations to which it had succeeded by Greek law. Accordingly, their lordships held that the appellant bank was liable to pay six years' arrears of interest to the bondholder, Metliss, and, in so holding, they affirmed a decision of the Court of Appeal (*sub nom. Metliss* v. *National Bank of Greece and Athens, S.A.* [1957] 2 Q.B. 33) and an earlier order of Sellers, J., dated 12th July, 1956.

However, a few days after Sellers, J., had first decided in favour of Metliss, a new Greek law (Act No. 3504) was enacted to amend the provisions of Act No. 2292 so that the bank, *as from the time of its creation in* 1953, became the "universal successor" of the amalgamated companies "... with the exception of the obligations of these companies as principal debtors, guarantors or for any other cause deriving from bonds, securities in general or contracts or any other cause and relating to loans in gold or foreign currency by bonds or otherwise payable to the bearer issued by the limited liability companies ..." Under Greek law this decree had a retrospective effect and absolved the bank from the obligations of the original guarantors in respect of the bonds. It came too late to affect the *Metliss* case but the interpretation of Act No. 3504 lay at the root of the decision in *Adams*, to which we must now turn. For whilst there was no doubt of the validity of the new Act within Greece the question arose in *Adams* as to how far it should receive effect here according to the principles of private international law as recognised by the English courts.

Facts of *Adams* case

In *Adams* v. *National Bank of Greece S.A.* it was shown that the appellants had presented for interest payments on these bonds a number of coupons at dates subsequent to the passing of Act No. 3504 in July, 1956, and that payment had been refused. The bondholders therefore sought to recover payment from the respondent bank in London; their claims were upheld by an order of Diplock, J., dated 13th March, 1958, but this order was reversed by the Court of Appeal (*sub nom. Adams and Others* v. *National Bank of Greece and Athens S.A.; Prudential Assurance Co., Ltd. and Others* v. *National Bank of Greece and Athens S.A.* [1960] 1 Q.B. 64), and the bondholders brought their consolidated appeals to the House of Lords. The opposing contentions were quite straightforward. The appellants argued that at all material times the "old" bank, and, after Act No. 2292, the "new" bank, were under an obligation to pay the bondholders interest and principal on the bonds as they became due. The obligation of the "old" bank became the obligation of the "new" bank as its "universal successor," and, since the proper law of the entire obligation was English law, by a well-established principle of private international law "... the obligation could not be altered or discharged to the detriment of the English creditor by a decree of the Greek Government" (per Viscount Simonds, at p. 14)—it was therefore immaterial that the Greek courts might pay regard to the new Act No. 3504. The respondent bank argued that, whatever might be the case if Act No. 2292 stood by itself, Act No. 3504 now absolved them from any former obligation; the status of the "new" bank was changed by Act No. 3504, and, since the "new" bank did not come into any kind of contractual

relationship with the bondholders, the principle of private international law referred to above could have no application (p. 14). In the words of Morris, L.J., in the Court of Appeal ([1960] 1 Q.B. 64, at p. 81) :—

> ". . . those who need recourse to Greek law must take it as they find it. If they assert that Greek law can endow, they must recognise that Greek law can disendow. If they aver that Greek law can create, they must accept that Greek law can change. If they need to have the foundation of Greek law on which to build a claim, they can hardly say that Greek law as it used to be suits them far better than Greek law as it is."

Question before House of Lords

The question before the House was, therefore, whether the courts of this country would recognise and give effect to Act No. 3504 as operating retrospectively so as to absolve the bank from its obligations as guarantor of the bonds on which the appellants were suing. Although reaching a unanimous decision in favour of allowing the appeal, their lordships approached the vital question of interpretation by somewhat differing paths and the judgments of Viscount Simonds, Lord Reid and Lord Denning are of especial interest. Viscount Simonds stressed that the bondholders were entitled and bound only to look at Act No. 2292 and that their rights and duties arose simply because the English courts recognised the "new" bank as having the status of "universal successor" of the "old" bank: from the moment that Act No. 2292 became operative there was an inchoate obligation to the bondholders. Whether one called Act No. 3504 an Act affecting status or an Act affecting the discharge of contracts :

> ". . . the principle of private international law in regard to discharge or alteration of a contract is applicable whatever device of nomenclature is used, if the effect of the challenged decree is the discharge or alteration of contractual rights" (at p. 15).

Therefore, since the respondent bank had become liable by virtue of Act No. 2292 on the guarantee, whose proper law was English law, it could not be discharged from that liability, in so far as the English courts were concerned, by subsequent Greek legislation.

Lord Reid and Lord Radcliffe adopted similar reasoning, but the former, addressing himself to the retrospective character of Act No. 3504, considered the argument for the respondents that the effect of this Act was not to discharge the guarantee obligations, but rather to deem that they never existed :

> "There is no general rule that English law will never give effect to foreign retrospective legislation, but that does not mean that a foreign Legislature can compel an English court to shut its eyes to proved facts. The British Parliament, being legally omnipotent in this country, can require us to do that . . . But I know of no principle, reason or authority which would entitle a foreign Legislature to do that" (at p. 22).

Lord Denning, after stressing that the proper law of the obligation was English law and that the legal consequences of the amalgamation of companies in this case, in relation to an English contract, were a matter for English law, turned his attention to the interpretation of Act No. 3504. He thought that it could be considered (p. 26) either as (i) a law relating to discharge, or (ii) a law relating to succession, or (iii) a law relating to status. In the first case, the guarantee liability could not be discharged by foreign legislation (see *Gibbs* v. *Société Industrielle et Commerciale des Métaux* (1890), 25 Q.B.D. 399) ; in the second case, English law will not recognise foreign legislation which retrospectively alters rights of succession (see *Lynch* v. *Provisional Government of Paraguay* (1871), L.R. 2 P. & D. 268) ; and, in the third case, could it be said that Act No. 3504, by amending an Act relating to status, became itself an Act of status and therefore governable by Greek law? This, in his view, was the nub of the problem ; must English law accept the amending Act, containing as it did a notion contrary to all notions of what a true amalgamation should be—an amalgamation which did not provide for *successio in universum jus*? Faced with such a circumstance he would prefer to adopt a dictum of Lord Atkin (in *Russian & English Bank & Florance Montefiore Guedalla* v. *Baring Bros. & Co., Ltd.* [1936] A.C. 405, at p. 428) to the effect that the municipal law of this country :

> ". . . may in defined conditions refuse to accept or may accept only under conditions the creation or destruction of a foreign juristic person."

Since, in the case before him, the amalgamation sought to be established retroactively contained an unusual exception of liability, the English courts should recognise only the "universal succession" provided by Act No. 2292 and should reject the purported later amendment of it.

Decision welcomed

Adams's appeal was therefore unanimously allowed by the House of Lords. The decision will be welcomed, especially as there is little authority of assistance. However, Viscount Simonds, Lord Radcliffe and Lord Tucker all found a dictum of Lord Penzance (in *Lynch's* case, at p. 271) to afford a helpful analogy. In *Lynch's* case a domiciled Paraguayan died in Paraguay, leaving personal estate in England ; after his death, but before a grant of probate was made in England, the provisional Government of Paraguay confiscated all his property, wherever situated. The English court held that the right to a grant of probate and the succession to property here must be regulated by the law of a deceased foreigner's place of domicile as it existed at the time of his death, and Lord Penzance said that it would be neither just nor convenient that an English court, once the validity and effect of a succession created by foreign law had become established by its rules, should recognise retrospective alterations of that succession which might be propounded by the foreign law (and see the decision of the Court of Chancery in *Re Aganoor's Trusts* (1895), 64 L.J. Ch. 521).

As was indicated at the outset, the judgments in *Adams* are of importance in three fields of the conflict of laws. With respect to domicile they illustrate that, although the domicile of a corporation is in the country under whose law it is incorporated, the capacity of the corporation to enter into legal relationships is governed both by its constitution (regulated by the law of the domicile) and by the law of the country governing the transaction in issue. Thus, in *Adams*, the law of the place of incorporation determined the validity of the transfer of assets and liabilities on the amalgamation of the banks in 1953, whilst the law of the country governing the transaction in question rejected a detraction from the universal succession of those assets and liabilities. With respect to *successio in universum jus* which results from the merger of companies, although the substitution by operation of law of one debtor for another will be governed by the personal law of the original debtor, it is the proper law (the legal system by which it is intended that the contract shall be governed) which will govern the discharge of particular contracts ; *Adams* shows, it is submitted, that the power of legislation to modify a contract is a question of discharge. Finally, as to the withholding by an English court of recognition of foreign

law, we have, in *Adams*, a clear illustration of an English court withholding recognition from the Greek Act No. 3504 because that Act vested all the assets of its predecessors in the respondent bank but only some of the liabilities. As Lord Denning said (at p. 28) :—

> "This exclusion is such an unusual provision in an amalgamation, and is so inconsistent with the essence of the transaction, that there is no comity of nations which requires the English courts to recognise it."

The number of cases in which an English court will withhold recognition because of the nature of the foreign law concerned is limited and not very clearly defined. In addition to the settled categories where the foreign law is expropriatory, confiscatory, penal, of a fiscal or revenue character, or contrary to fundamental English public policy or ideas of morality, there is a line of cases which indicates that recognition may be withheld if the foreign law is "not conformable to the usage of nations" (see, *inter alia*, *Wolff* v. *Oxholm* (1817), 6 M. & S. 92; *Re Krupp Aktien-Gesellschaft* [1917] 2 Ch. 188; *Anglo-Iranian Oil Co., Ltd.* v. *Jaffrate; The Rose Mary* [1953] 1 W.L.R. 246; *Re Helbert Wagg & Co.'s Claim* [1956] Ch. 323, at p. 340). Since the field of "public policy" in this connection (as in so many others) is both undefined and perhaps undefinable, it may be sufficient to say of the Greek Bank case that, in the final analysis, it shows that a discharge not in accordance with the proper law of the contract is not valid.

K. R. Simmonds.

LAW IN A COOL CLIMATE—III

After lunch on the third day of Sir London Thomas's visit to Refrigia he was piloted, together with his companions Mr. Bull and Mr. Bear, to a comfortable seat in the gallery of the town court which he had inspected that morning. A criminal case was called punctually to time-table and a man accused of robbery with violence appeared in the dock at the back of the court.

Counsel for the police described briefly to the judge the sort of offence which he expected to appear from the evidence, and with no other opening called his witnesses. To Sir London's surprise, the witnesses spoke of events that had occurred only two days previously. Prosecuting counsel had no proofs of evidence. His questioning was patient and helpful as he persuaded his witnesses to explore their memories and tell what they knew. The last person to be questioned was the accused. Except that he was questioned by his own counsel first, there appeared to be little distinction between the handling of the accused and of the prosecution's witnesses. When the accused had returned to the dock, the judge rather abruptly ordered the trial to be continued at a date to be agreed under s. 17 of the Assaults Act, 1930, and the court then rose.

Sir Ambrose led his visitors to the lawyers' room (shared by barristers and solicitors) and they sat down on two of the sofas.

"What you have been hearing," said Sir Ambrose, "is the first half of a criminal trial. The judge's order means that he is satisfied that a prima facie case has been made out under one of the sections of our criminal laws. The evidence has been heard and recorded and typescripts will be available for the second half of the proceedings, which will take place in a few days' time. In most cases the second hearing consists simply of a review of the evidence and legal argument by both sides, but it is open to either side to call further witnesses or to ask for the recall of one of today's witnesses if they wish after studying the transcript. The police may find another witness or may ask for time in which to do so, and it is very likely that the accused will be put into the witness box again. He is never allowed to refuse to give evidence. Occasionally, but not often, the case involves three hearings, and that is the maximum permitted under the rules. Usually two hearings are enough. I have heard a barrister ask the judge to exercise his discretion and permit a fourth hearing, but it is very much frowned upon and is regarded as a confession of weakness. We believe that any person accused on a criminal charge should be either acquitted or convicted within three weeks.

Limited interrogation of witnesses

The essential difference of our system from yours, as you will have noticed, is that no witness is questioned except under the personal supervision of a judge. Under your system, witnesses, including the accused person, may be questioned several times before ever the case comes into court, first by the policeman who has made the arrest or who has made inquiries for witnesses, and later more than once in the police station. After two or three statements have been set down on paper at different times and in different circumstances, the accused person is then taken before a magistrate where he is questioned once again and the case at this point is frequently only recorded and not tried. If it is considered desirable that evidence should be recorded by a magistrate before it comes to trial, why then is it also recorded by the police before it comes to the magistrate? Why should evidence be written down twice and sometimes three times over (and invariably in longhand) before it comes before the judge who is going to decide it?

Apparently you feel that a constable must take down a statement before he decides to report the matter to his superintendent. The superintendent must take the evidence down all over again, or have it done for him, before he decides that the arrested person should be charged. The magistrate has to take it down a third time before he decides that the charged person should be committed for trial. Then at the trial the shorthand-writer takes it down, the judge takes it down, and a couple of advocates take it down. I have noticed with particular amusement, when visiting your courts of quarter sessions and assize courts incognito on my secret visits to England, that half the time at the actual trial seems to be spent on browbeating witnesses about slight discrepancies between what they are supposed to have said before the magistrate and what they are now saying during the trial. All the unfortunate witness is allowed to do before the magistrate is to answer questions. He is rarely permitted to amplify a point or to speak in what are really his own words. He is asked a series of questions which are often quite difficult to answer satisfactorily and the clerk of the court sitting in front of the magistrate writes down a consecutive statement which the witness in fact had never uttered. This is read over to the witness at the end of his evidence and he is asked if he agrees with it. To point out all the shortcomings of the statement, its minor ambiguities, its omissions and its wrong emphases, might take a clever man an hour, and witnesses may be

forgiven for not attempting it. When at the next hearing they answer in slightly different words and perhaps try to give a little fuller information, they are leapt upon and practically accused of perjury.

I will pass over the doubts that I am afraid we all feel here in Refrigia about the way police statements are obtained before ever the matter comes to the magistrates. We know you have your Judges' Rules, but is it not true that the keener the policeman the more he will try to ensure a conviction? It would take an archangel in blue to comply with the Judges' Rules in every case.

Our view is that truth is truth and the sooner you get at it the better. We do not think much of magistrates so we do not let them intervene. We respect our police, the Bluecoats, possibly more than you respect yours, but we regard them as detectives, as pursuers of information, and not as petty judges. A policeman must be allowed to act on a reasonable suspicion, but as soon as he thinks he has detected an offence, the facts on which he has been acting should be sifted as soon as possible by a judge who is used to the art of trial. What the accused man then says is taken down verbatim, not transposed into words chosen by his hearer.

Today you have heard the preliminaries of a criminal trial. The facts elicited may be all that either side will require, but, as I have mentioned, further opportunities are given, within limits, to both sides to bring out further facts if they wish to do so. When all the facts are in the book, we are ready for the real trial itself, which is a legal argument based on statements which no one can dispute.

You have heard nothing said about bail before the judge. Our rule is that bail is always allowed unless the prosecution specially apply for the accused to be kept in custody. The result is much the same as with your system, but we are perhaps able to afford to be a little kinder to accused people, as it is so difficult to leave our country.

Examination procedure

You will observe how much more briskly the questioning of counsel proceeded when counsel had no necessity to stop and write notes. They will have the full transcript tomorrow. The rule in which our counsel are instructed is that the most useful question is a polite invitation to the witness to continue. Keep the witness talking. Suggest new angles of the matter about which he should talk. We believe that, the more a witness talks, the more quickly does it become apparent whether he is telling the truth or not. Nothing so plays into the hands of an untruthful witness as to ask him questions which only require the answer 'yes' or 'no.' It is easy to say 'yes' when the answer is really 'no,' although I understand that in your country the answer is 'definitely.' It is far more difficult to continue talking at length when you know you are developing an untruth.

We place little reliance on cross-examination. We appreciate the wisdom of your rule whereby the defence must not produce surprise evidence which has not been first put to the prosecution witnesses, but as we always permit the recall of a witness when a subsequent witness has given contradictory evidence, the necessity for this tedious process does not arise.

We have, above all, read the shorthand transcripts of many thousands of cases tried in your High Court in an effort to establish whether cross-examination along the lines fashionable with your Bar ever does any good. According to our calculations, the percentage of cases in which cross-examination has done any real good to either prosecution or defence is a very small fraction of 1 per cent. It is, of course, the way your cases run on and on, with counsel droning away, earning their brief fees, tying the witnesses into knots rather by the confusion of the questions than by the cunning of the questioner, and usually tying the questioner himself into knots at the same time, that causes your system of justice to be so expensive.

Cross-examination, as you understand it, is something which we respectfully regard as a weed to be cast out."

"There will be an opportunity," said Sir Ambrose Leeward, "to see a divorce case in the same room tomorrow. Perhaps you would care to join me."

(To be continued) E. A. W.

"THE SOLICITORS' JOURNAL," 15th SEPTEMBER, 1860

On the 15th September, 1860, The Solicitors' Journal published a letter about Chancery delays: "There is a story told of an old equity judge that when he had given judgment he had the minutes of the order prepared and settled there and then in the presence of the registrar, the counsel and the solicitor and would never afterwards listen to a word more about the matter. Could not something tantamount to this be usefully done now? . . . The fact is that the judges are in too much of a hurry to get through the business to bestow a moment's time on the form of the order. The registrar has not the opportunity to make any suggestions on the subject, and is left to his imperfect memoranda and recollection afterwards to frame the official record of the decision at which the court has arrived. Five minutes' time then would save the delay of days and days after. But then perhaps a judge could not say he had got through so many cases a day and cleared his paper! . . . The evil of causes being put in the paper to be spoken to on the minutes and then re-argued is unquestionably abated; but it ought never to occur at all. A well digested judgment should dispose of the merits and the form of the order as well. If the parties do not urge anything they have to say on either point at the proper time, their mouths should be closed afterwards."

Honours and Appointments

Mr. Frederick John Pearson, clerk and solicitor to Crook and Willington Urban Council, Co. Durham, has been appointed Town Clerk of Kendal.

Societies

The Central and South Middlesex Law Society is establishing a prize fund for the encouragement of articled clerks who do well in the examinations of The Law Society. The prizes may be aimed particularly at encouraging those who do well in book-keeping and accounts sections of their examinations.

Personal Notes

Mr. Frederick Cockroft, solicitor, of Keighley, won first prize in the handicraft section of Keighley agricultural show on 3rd September with a tapestry picture depicting a mediaeval scene and containing 300,000 stitches.

Mr. Brian Burgoyne Firth, solicitor, of Bradford, was married on 6th September to Miss Judith Kathleen Davison, of Burley-in-Wharfedale.

Mr. James Wilson, solicitor, of Morecambe and Heysham, was married on 27th August to Miss Elizabeth Booth.

Landlord and Tenant Notebook

PEACEABLE RE-ENTRY

IT is not my function to discuss the merits of decontrol, and all I propose to say about the state of affairs brought about by the Rent Act, 1957, Sched. IV, para. 4, the "three years' tenancy" provision of the transitional provisions, is that it seems to afford another illustration of the triumph of hope over experience. The Rent and Mortgage Interest Restrictions (Amendment) Act began "1. (1) The Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925 . . . shall continue in force until the 24th June, 1938, and no longer"; on 26th May, 1938, there came into force the Increase of Rent and Mortgage Interest (Restrictions) Act, 1938, of which s. 1 provided: "The principal Acts shall continue in force until the 24th June, 1942."

But reports in the daily newspapers show that observations are being made and advice tendered about re-entry without legal process which are not sound. At least one speaker has asserted that a landlord may not re-enter without taking legal proceedings; and such an assumption must have underlain the advice given by another, who suggested that if all the tenants affected sat tight county court lists would become so congested that they (the tenants) could continue so to sit for a long time.

Criminal law

Ignoring the common law and the special powers conferred on magistrates by the Statute of Forcible Entry, 1391, and the Forcible Entry Act, 1429 (in *Ex parte Davy* (1842), 2 D. (N.S.) 24, the court refused a mandamus to proceed thereunder), the chief deterrent is to be found in the Forcible Entry Acts, 1381, 1391 and 1623. The operative words of the 1381 statute are: "None from henceforth make any entry into any lands and tenements, but in case where entry is given by the law; and in such case not with a strong hand, nor with a multitude of people, but only in peaceable and easy manner"; the 1391 Act was confirmatory, and provided that justices should enforce the law by raising a *posse comitatus*; that of 1623 empowered justices to restore possession to lessees for years.

For a long time, more was to be found about the meaning and effect of such enactments in the writings of learned commentators than in reported decisions. As regards the alternative, Hawkins told us that a single person could commit the offence, which seems rather obvious (1 Hawk. P.C., c. 64, s. 29). Of more interest, however, is the question of what is meant by "forcible."

Thus, there can be violence to individuals or to inanimate matter; and either can be threatened. Behaviour or speech which gives just cause to fear that bodily hurt will be done makes the entry forcible (1 Hawk. P.C., c. 64, s. 27), but a threat of damage to goods will not have that effect (ibid., s. 28). Breaking in will constitute the offence, at all events if the premises are occupied (ibid., s. 27); so will violence to a building (3 Bac. Abr.), but entering via an open window, or by using a key, or by a trick or artifice, is not forcible entry (ibid., s. 26).

Interests

In the nineteenth century, the view taken in certain authorities was that a landlord had no right to eject a tenant whose term had expired and that though the ejected ex-tenant could not recover possession he must at least be entitled to damages. *Newton* v. *Harland* (1840), 1 Man. & G. 644, and *Beddall* v. *Maitland* (1881), 17 Ch. D. 174, warranted this view; in the one, though the litigation was abandoned after two re-trials for misdirection, half of the judges expressed opinions that expulsion following forcible entry was actionable; in the other, Fry, J., considered that any force used to eject the plaintiff was an "independent wrongful act."

The whole position was exhaustively reviewed by the Court of Appeal in *Hemmings and Wife* v. *Stoke Poges Golf Club* [1920] 1 K.B. 720 (C.A.), and while the case actually concerned the ejectment, no more force being used than was necessary, of licensees whose licence had determined, the judgments would clearly cover a case in which a tenant had been so treated after term expired. The following passages indicate the result of the court's deliberation:—

"If the view of the law expressed in *Newton* v. *Harland* is correct it must follow that the law confers upon the lawless trespasser a right of occupancy the length of which is determined only by the law's delay . . . I do not believe that this is a true view of the law": Bankes, L.J.

"It seems to me that when the grievance complained of is the removal by no more force than is necessary of a trespasser and his property from premises which the landlord has the right to enter for that purpose, the justification covers not only the entry but the forcible expulsion which is the object of the entry, and which makes the entry a forcible one," but "It will still remain the law that a person who replies to a claim for trespass and assault that he ejected a trespasser on his property with no more force than was necessary may be successfully met by the reply that he used more force than was necessary if the jury can be induced to find it. The risk of paying damages and costs on this finding, and the danger of becoming liable to a prosecution under the statutes of forcible entry may well deter people from exercising this remedy except by order of the court. But I see no reason to add to the existing privileges of trespassers on property which does not belong to them by allowing them to recover damages against the true owner entitled to possession who uses a reasonable amount of force to turn them out": Scrutton, L.J.

In a more recent case, *Butcher* v. *Poole Corporation* [1943] K.B. 48 (C.A.), Lord Greene, M.R., pointed out in the course of his judgment that a landlord re-entering on the termination of a lease was merely exercising his own proprietary right, and compared the position with that obtaining when *B* takes back his bicycle from *A* who has stolen it.

Temporary provisions

The "existing privileges" can, of course, be added to by legislation; and no doubt Parliament had *Hemming* v. *Stoke Poges Golf Club* in mind when it began the Landlord and Tenant (Temporary Provisions) Act, 1958, with: "It shall not be lawful for the owner of a dwelling-house to which this Act applies [certain decontrolled dwelling-houses] to enforce against the occupier, otherwise than by proceedings in a court of competent jurisdiction, the right to recover possession of the dwelling-house." Whether the statute in question be considered an amending enactment or not, it would seem that in the absence of some new measure the deterrent effect of the statutes of forcible entry should be less than has been suggested.

R. B.

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(continued on p. xiv)

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Leyton.—HAROLD E. LEVI & CO., F.A.L.P.A., Auctioneers and Surveyors, 760 Lea Bridge Road, Leyton, E.17. Tel. Leytonstone 4423/4424.

Leyton and Leytonstone.—R. CHEKE & CO., 252 High Road, E.10. Tel. Leytonstone 7733/4.

Leytonstone.—COMPTON GUY, Est. 1899, Auctioneers, Surveyors and Valuers, 55 Harrington Road. Tel. Ley 1123. And at 1 Cambridge Park, Wanstead. Tel. Wan 5148; 13 The Broadway, Woodford Green, Tel. Buc 0464.

Leytonstone.—PETTY, SON & PRESTWICH, F.A.I. Chartered Auctioneers and Estate Agents, 682 High Road, Leytonstone, E.11. Tel. LEY 1194/5, and at Wanstead and South Woodford.

Mill Hill.—COSWAY ESTATE OFFICES, 135/7 The Broadway, N.W.7. Tel. Mill Hill 2422/3422/2204.

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Faringdon.—HOBBS & CHAMBERS, Chartered Surveyors, Chartered Auctioneers and Estate Agents. Tel. Faringdon 2113.

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Newbury.—DREWEATT, WATSON & BARTON. Est. 1759. Chartered Auctioneers, Estate Agents and Valuers, Market Place. Tel. 1.

Newbury.—C. G. FOWLIE, F.R.I.C.S., F.A.I., Chartered Surveyor, 16 Bartholomew Street. Tel. 761 (2 lines).

Newbury and Hungerford.—A. W. NEATE & SONS. Est. 1876. Agricultural Valuers, Auctioneers, House and Estate Agents. Tel. Newbury 304 and 1620. Hungerford 8.

Reading.—HASLAM & SON, Chartered Surveyors and Valuers, Friar Street, Chambers. Tel. 54271/2.

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Slough and Gerrards Cross.—GIDDY & GIDDY. Tel. Nos. Slough 23379, Gerrards Cross 3987.

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(*continued on p. xv*)

CORNWALL (*continued*)

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St. Austell, Lostwithiel and Liskeard.—ROWSE, JEFFERY & WATKINS, Auctioneers, Valuers, Surveyors and Estate Agents. St. Austell 3483/4. Lostwithiel 45 and 245. Liskeard 2400.

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Darlington.—SANDERSON, TOWNEND & GILBERT Chartered Surveyors, 92 Bondgate.

HERE AND THERE

DECLINE OF LAW

I THINK Lord Radcliffe somewhere expressed the opinion that the modern world, as it is at present constituting itself, will have little use or room for lawyers. There are many indications which would lead one to agree with him. The lawyer assumes orderly behaviour within the rule of law, personal responsibility, the exercise of free will, respect for mutual rights and duties. He is as alien to the tyranny which issues arbitrary orders in a servile State as to the anarchy and chaos when everybody acts on momentary impulse or immediate self-interest without a care in the world for the implications or the remoter consequences of his actions. At the moment we seem uncertain which way we are heading, so long as we get away from the rule of law. Above there is an increasing pressure of arbitrary government. Below there is an increasing disintegration into unprincipled and unco-ordinated action—unprincipled in the sense that it is unrelated to any coherent view of human life or behaviour. The results are so weird that they would make any of the great satirists of the past smash his pen in dispair. You cannot really caricature people who are already caricatures of themselves.

RIGHTS AND DUTIES

TAKE two little news items from the current English scene and try to bring a little mental order to bear on them. For a start take the case of an attractive midteen-age schoolgirl attending a performance by her favourite "pop singer" at her local theatre. What happened next let her describe in her own burning words. "I let myself swoon. I felt really sent—his singing does that for me. Suddenly I found myself running down the aisle. I had to be near him." Her ecstacy sent her not only down the aisle with the grace of Diana and the swiftness of Atalanta but right over the orchestra rail, with the vigour and determination of a first World War infantryman charging "over the top" of a trench parapet. Here gallantly she fell—right among the musicians, wrecking a saxophone and a flute in her *débâcle*. So far so good. Right back to classical mythology one can trace tales of people driven frantic by music and even of a musician torn to pieces by frenzied women. This "pop singer" may in a sort of a way be regarded as the heir to Orpheus and Arion and had the young lady attained her final object of proximity and in her blind enthusiasm done him an unwitting injury, why, that no doubt would have been an occupational risk and the principle *volenti non fit injuria* would have applied. As it was she was taken to the local police station where sympathetic policemen restored her mental equilibrium with innumerable cups of tea (the English panacea) and sent her home. But there is more to the story than that. The musician, that injured third party, estimating the damage to his instruments at £150, sent the young lady and her father a request for payment. With what result? The father said this: "That just shows what these popular musicians are like. Not one of them has asked about her. The least that boy" (the singer) "could have done was to ask to see her after the show. Why should we pay compensation? The instruments would be insured." Analyse that conception of rights and duties if you can, not, you will notice, the starry-eyed schoolgirl's conceptions, but the conceptions encouraged in her (if he is rightly reported) by a grown-up and presumably responsible father. Suppose the pop singer *had* called on the girl at her father's house and, maddened by desire at her beauty and grace, had thrown himself into her arms so violently that he smashed the sofa and had to be helped away by the police? Of course, the situation is quite clear. Why should he pay for the furniture? It would be insured. Yes? And naturally, the least the family could have done would have been to pay him a return visit.

"WORKING MEN"

Now take another little *vignette* of the sort of mind with which the lawyer has to wrestle to-day. Quite recently three hooded men raided the guard's van of a Brighton–London train and stole £8,000-worth of registered mail. They trussed up, gagged and blindfolded the guard and sealed the door with six-inch nails. So far so good. Banditry and train robberies are well enough known in the history of crime. Anyone can understand the motives for them. But what is new and strange is the justification and consolation offered by one of the bandits to the guard. "We are only working men like you trying to get a living." Picture to yourself all the assumptions that lie behind that short lapidary phrase. Place it in the context of Ireland in the time of the great famine or of England in one of the periods of great unemployment or of Southern Italy swarming with a desperate landless peasantry and, even then, it would be a rather exaggerated use of words to refer to a snatch of £8,000 as "trying to make a living." But put it in the context of the Welfare State, full employment, high wages and then ask yourself from what school, or newspaper, or broadcast or political manifesto can anyone get the idea that a bandit is "only a working man," doing a job like anyone else and "trying to make a living" to the tune of £8,000 for an hour's work? If one must put up with violent bandits one must, but, as a lawyer and even as a citizen, I would rather they did not work in a social atmosphere which clouds their minds with humbug.

RICHARD ROE.

ELECTRONIC LAW LIBARY

Members of the American Bar Association recently saw a demonstration of the "retrieval" of legal information by an IBM computer. The full text of laws from various states relating to several different topics was stored on magnetic tape files in the computer system. When specific statutes were required the machine was fed with certain words which were expected to be contained in them (e.g., taxation, exemption, charitable, hospital). Searching through a vocabulary list which the machine itself had created, the computer produced in a few minutes and printed out facts that would have taken many hours to find by conventional methods.

GRANTS *DE BONIS NON*: CORRECTION

The example numbered (1) in our article on Grants *de bonis non*, at p. 558, was not happily drawn, as s. 30 of the Conveyancing Act, 1881, only affected trust and mortgage estates. The illustration should have been cast in such a way that *A* died after 1897, so that Blackacre devolved on the executor under the Land Transfer Act, 1897. The position is explained correctly in the article in para. (*c*) on p. 557.

Obituary

Mr. ERIC WILSON, solicitor, of Ashton-under-Lyne, died on 31st August. He was admitted in 1930.

REVIEWS

The Life of Chief Justice Way. By A. J. HANNON, C.M.G., Q.C. pp. 272. 1960. London: Angus & Robertson, Ltd. £2 2s. net.

The average English reader unfortunately knows very little of the public and political life of South Australia or of its distinguished figures during the past century. This painstakingly thorough biography of one of them will enable those who wish to remedy their deficiencies in this respect to gain a good deal of knowledge. Born at Portsmouth in 1836, Way emigrated to Australia at an early age. The son of a Bible Christian minister, he felt no vocation to follow his father's calling, but rather he was attracted to farming. Chance employment in a lawyer's office, however, turned him to a legal career. He became Chief Justice in 1876 and held his office until his death in 1916. In 1906 he had been offered and had declined a seat on the Bench of the High Court of Australia. He was a man of great vitality and innumerable interests and throughout his public life rendered great service to the advancement of education through Adelaide University. It is hard for us to realise now how primitive was Adelaide when Way arrived there in the eighteen-fifties. It was without railways, telegraph lines or a reticulated water supply. Water was carted round the streets in barrels on drays and everywhere was incessant and overwhelming dust. Way's lifetime in South Australia spanned a period of extraordinary change, but, as his biographer notes, he had the happiness to die just at the right moment. Already he was apprehensive of the future and had he lived another ten years "he would have seen the ideals and principles that he tried, not without success, to spread abroad in the community falling into neglect and decay . . . He would have been grieved . . . to notice the steady decline in religious belief and in the influence of religious ideals. Most of all, he would have deplored the tendency of the individual to lean upon the Government, as upon an earthly Providence, for the good things of life, conceived as entirely material, for he himself . . . viewed progress in terms of the growth and development of self-reliance and of moral training of the character of every citizen." This book therefore tells the story not only of a man but of a vanished way of life. Way was a Victorian-Edwardian and died in the middle of the war which destroyed the world he had known.

Most of My Murders. By JOHN PARRIS. pp. 288. 1960. London: Frederick Muller, Ltd. 18s. net.

"Most of My Murders" is well written and reads like a series of short thrillers—although, of necessity, macabre in character. Its style is fluent and the reader's interest is sustained throughout. From these forensic narratives the author emerges as a shrewd—if at times prejudiced—observer of his clients, his colleagues, and the judges before whom he practised. But when Mr. Parris states that the death penalty can never be an effective deterrent—because the English law is now so muddled and confused that no lawyer can accurately define what is murder and what is not murder (when applied to any given set of facts), and because no one can define with precision what provocation can reduce a killing from murder to manslaughter, or what is meant by "diminished responsibility"—we are far from being able to agree.

Here are some of the judgments of *Mr.* Parris, good and otherwise: With a British jury, all things are possible; the wisest thing an accused could possibly do is to write his own statement; it is a false sense of values which condemns as pornographic a written description of such a delightful and natural pastime as love-making, and approbates stories and plays which deal with the death of one of God's creatures; when a witness for the prosecution disappears between committal and trial, the defence should be entitled to have his deposition read out to the jury; if the clerics would devote a fraction of the energy they spend in fulminating against divorce to agitating against road deaths, war and capital punishment, they might be of more use to society and more in keeping with the will of God; Lord Simon's dictum in *Mancini* v. *D.P.P.* to the effect that "the mode of resentment must bear a reasonable relationship to the provocation, if the offence is to be reduced to manslaughter" is a lot of nonsense; in temporary insanity due to the defendant's drunkenness "only one limb of the McNaghten's rules apply [*sic*]—his insanity must be of such a nature that he does not know what he is doing is wrong"; in these days an advocate cannot vigorously defend his client's interests in a criminal case without damaging his own, for he may thus incur not only the hostility of the police forces (which means he will not see any well paid prosecution briefs) but also that of the Bench; the exercise of the prerogative of mercy is beyond reason or logic; the right to "the last word" is of little value to the defence.

Apparently he was not happy at the Bar, and not everybody was happy with him. In the circumstances, he could not long remain in the profession. As it happened, in spite of the fact that he soon built up a prosperous practice, he became—he says—sick at heart, sick at English law and lawyers, and he "decided to find some business which, if successful, would enable me before long to retire from the Bar." Well, now that he is out of it, he feels that he is freed "from the secrecy imposed by the profession" and "has written the inside story" of eleven of the most interesting of his murder cases. Unfortunately, he has thought it right to make certain revelations which appear to us to be of a confidential nature. We regret that we cannot share his opinion. Quite apart from the ethical aspect of the issue, Mr. Parris must know that these secrets are not his to sell or divulge to the public, for the privilege which attaches to communications between a client and his legal advisers belongs to the former and he alone can waive it. Nor is it right for Mr. Parris to disclose any differences he may have had with his leader on the conduct of a case; or any differences between his opponents who conducted another case for the Crown, which came to his knowledge professionally.

Plutocrats of Crime. A Gallery of Confidence Tricksters. By former Chief Inspector PERCY SMITH of Scotland Yard. Written in association with Adrian Ball. pp. (with Index) 223. 1960. London: Frederick Muller, Ltd. 18s. net.

This is a complete gallery of confidence tricksters classified according to their respective techniques, that is to say: the spurious Stock Exchange operators, the gigolos who specialise in despoiling women, the cardsharpers, the gold-brick salesmen, the rosary droppers and the exponents of the infallible betting system. Over a hundred tales—short and true, full of fake and fun—recount in detail the rapacious exploits of unscrupulous rogues whose craft commands a grudging admiration mingled with unlimited contempt. Their skill lies in making a most fantastic promise look, in advance, like the very image of fulfilled reality. On the other hand, the vacuous disappointment of their dupes evokes more amusement than sympathy. Invariably, their incredible gullibility springs from and feeds on their colossal greed. As a matter of fact, criminal and victim possess one feature in common which establishes their relationship—acute selfishness. Stimulating each other's perversion, they play a game of filthy lucre—each one expecting to get the better of the bargain, and one of them wins! But, as might be expected, the rules of the game are far from fair—indeed, altogether one-sided; for while they permit the hunting to be undertaken by a pack, they insist on the unsuspecting quarry being strictly isolated in a veritable game preserve. For weeks on end, across seas and over continents, one of these international crooks would patiently shadow his customer and keep him company. He would probably scheme and plot with one or two of his confederates, who often deceive each other on the side—but always at the expense of the customer. Now this is a very strange customer, for he or she expects to get a good deal for nothing—no fee, no commission, not even the price of a meal. Have these people, some of whom are shrewd business men, the moral right to complain if and when in the end it is the others who get all for nothing? And the "all" runs often into thousands: £50,000 and as much as £150,000! Why not spend less than a quid on this entertaining little book, and enjoy a full *pro quo* for a couple of hours?

Whillans' Tax Tables and Tax Reckoner, 1960–61. By GEORGE WHILLANS, F.I.B., F.T.I.I., F.R.Econ.S. 1960. London: Butterworth & Co. (Publishers), Ltd. 5s. post free.

In eleven closely packed pages these tax tables give a surprising amount of information, which is clearly set out and easy to find quickly. Some additional financial intelligence which is not strictly subsumed under the heading of tax is included and will no doubt prove useful.

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(continued on p. xvi)

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(*continued on p. xvii*)

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NOTES OF CASES

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Judicial Committee of the Privy Council

LIBEL: NEWSPAPER: REPUBLICATION: INNUENDO: ALLEGED MISDIRECTION

"Truth" (N.Z.), Ltd. *v.* Holloway

Viscount Simonds, Lord Reid, Lord Tucker, Lord Denning, Lord Morris of Borth-y-Gest. 26th July, 1960

Appeal from the Court of Appeal of New Zealand.

In the course of an article calling for an inquiry into the issue in New Zealand of import licences, the appellant's newspaper, *N.Z. Truth*, stated that a man had seen one Judd, to whom an import licence had been issued, with the object of getting information from him about import procedure, and that Judd had told him to "see Phil and Phil would fix it . . . By 'Phil' his caller understood him to mean the Hon. Philip North Holloway, the Minister of Industries and Commerce." The Minister thereupon brought this action for libel against the newspaper, pleading an innuendo—that the words meant that he was "a person who has acted and is prepared to act dishonourably in connection with the issue of import licences." The jury awarded the plaintiff £11,000 damages. An appeal to the Court of Appeal of New Zealand was dismissed on 6th November, 1959. The newspaper now appealed, asking for a new trial on the ground of misdirection.

LORD DENNING, giving the judgment, said that there was nothing wrong in the trial judge's direction to the jury that "on the question of whether the passage that is complained of bears the meaning that the plaintiff alleges that it bears, the fact that the newspaper might have been calling for a general inquiry has no bearing at all." Nor was there anything wrong with the direction that "it is not a defence at all that a statement that might be defamatory is put forward by way of report only . . . The case is properly to be dealt with as if the defendant itself said 'See Phil and Phil would fix it'." Every republication of a libel was a new libel, and each publisher was answerable for his act to the same extent as if the calumny originated with him; Gatley on Libel and Slander, 4th ed., p. 106. Further, the judge was right in directing the jury that "it should be established by the plaintiff that the words bear the meaning alleged by him" and that no lesser meaning would suffice. If the jury had thought that the words conveyed, not an imputation of guilt, but only of suspicion, the plaintiff would have failed to prove his innuendo: *Mountney* v. *Watton* (1831), 2 B. & Ad. 673, at p. 678; *Simmons* v. *Mitchell* (1880), 6 App. Cas. 156. There had been no misdirection, but even if there had been, the summing-up as a whole provided the jury with a fair guide. "A summing-up is not to be rigorously criticised; and it would not be right to set aside the verdict of a jury, because in the course of a long and elaborate summing-up the judge has used inaccurate language": *Clark* v. *Molyneaux* (1877), 3 Q.B.D. 237, at p. 243. Appeal dismissed.

APPEARANCES: *Robin Cooke* (N.Z. Bar) (*Wray, Smith & Co.*); *W. E. Leicester* (N.Z. Bar) and *Helenus Milmo* (*Oswald Hickson, Collier & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

Court of Appeal

LEGAL AID: APPEAL: NOTICE TO BE FILED WITHOUT WAITING FOR GRANT OF LEGAL AID

Addison *v.* Addison and Holden

PRACTICE NOTE

Hodson, Ormerod and Harman, L.JJ. 18th July, 1960

Application for leave to appeal when time expired.

HODSON, L.J., in the course of granting an application for leave to appeal, notwithstanding that time within which notice of appeal should be filed and served had expired, made the following observations: The court could not do other than extend the time, but he would like it to be publicly known that a great deal of money had been wasted in this case. The notice of appeal was sent to the opposition, but the step was not taken of filing it in the appropriate registry. The reason was because there was delay in seeking and obtaining legal aid, but the costs had been incurred to-day on behalf of both parties in order to secure an extension of time for leave to appeal. If the notice had been filed within the proper time it would have been a matter involving little expense and all this could have been avoided. He could not understand why parties were not prepared, if they wished to appeal, to incur the very small expense of giving notice of appeal, and filing it in the proper place, without waiting to see whether the public purse would bear the cost of their litigation.

ORMEROD and HARMAN, L.JJ., concurred.

APPEARANCES: *F. S. Laskey* (*Edwin Coe & Calder Woods*, for *Simpson & Ashworth*, Accrington); *J. A. P. Hazel* (*Sharpe, Pritchard & Co.*, for *Sharples, Son & Slinger*, Accrington).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law]

HUSBAND AND WIFE: COSTS OF STATEMENT TAKEN BY PETITIONER'S SOLICITOR FROM RESPONDENT WRONGLY EXCLUDED

Davies *v.* Davies

Hodson, Willmer and Devlin, L.JJ. 21st July, 1960

Appeal from Judge O. Temple-Morris (sitting as commissioner).

The costs incurred by a solicitor acting in a divorce suit for a wife petitioner in taking a statement from the husband which contained a confession of adultery were disallowed by the commissioner on the ground of his disapproval of solicitors taking such statements, which he thought should be taken by inquiry agents. By this appeal the court was asked to set aside that part of the commissioner's order by which be excluded these items of costs.

HODSON, L.J., said that the weight of evidence did not vary because the person who obtained a statement was a solicitor—necessarily at any rate—as against the case where similar evidence was obtained by an inquiry agent; and any matter of professional ethics was a matter not for the commissioner but for the disciplinary body, namely, The Law Society, which had to do with the professional conduct of solicitors. It was not a judicial exercise of discretion to deprive the solicitor of any part of the costs because the evidence had been obtained in that particular way.

WILLMER, L.J., said that it was impossible to say that in all circumstances such a practice was either right or wrong; every case had to be judged on its own particular facts.

DEVLIN, L.J., said the object of the commissioner's order was to penalise the solicitor for having acted in a way which, in the commissioner's view, was improper, and although the commissioner had power under R.S.C., Ord. 65, r. 11, or under the inherent jurisdiction of the court to make such an order, there was here no question of these costs having proved fruitless, and there was, therefore, no power under the rule or under the inherent jurisdiction to make it and it was misconceived. In the absence of a clear practice, a solicitor was entitled to use his own judgment. Appeal allowed.

APPEARANCE: *C. Trevor Reeve* (*Theodore Goddard & Co.*, for *Myer Cohen & Co.*, Cardiff).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law]

LANDLORD AND TENANT: BUSINESS PREMISES: DISCOVERY ASKED ON ORIGINATING SUMMONS

Wine Shippers (London), Ltd. *v.* Bath House Syndicate, Ltd.

Hodson, Ormerod and Harman, L.JJ. 25th July, 1960

Appeal from Buckley, J. ([1960] 1 W.L.R. 613; p. 490, *ante*).

Landlords served a notice under s. 30 of the Landlord and Tenant Act, 1954, determining a tenancy of business premises, and stated in the notice that they would oppose any application for a new tenancy on the ground that they intended to demolish or reconstruct the whole of the premises and could not reasonably do so without obtaining possession. The tenants served a counter-notice under the Act stating that they were unwilling to give up possession, and applied to the court by originating summons for the grant of a new tenancy. The tenants filed an affidavit stating that they did not admit that the landlords had the requisite intention to demolish or reconstruct the premises on the termination of their tenancy, and the master adjourned the originating summons into court to be tried on cross-examination of the deponents on their affidavits and on oral evidence in chief to be cross-examined to. The tenants applied by summons for further directions asking for discovery of a large number of documents. Buckley, J., ordered discovery of documents bearing upon the question whether the landlords had a firm and settled intention to carry out the project. The landlords appealed from that decision.

HODSON, L.J., said that, if the matter had been *res integra*, he would have approached this case on the footing that it was obviously a matter in the discretion of the judge, with which this court could not be expected to interfere. There were no rules dealing with discovery in matters raised by originating summons; and there was authority which was binding on this court to the effect that, although there was a discretion to make orders for discovery in these cases, that discretion would only be exercised in special circumstances. The authority was that of Lord Greene, M.R., in *In re Borthwick* [1948] Ch. 645. The words of the judgment relied on were: ". . . discovery in proceedings in the Chancery Division by originating summons ought only to be ordered in very special cases where the facts are such as to justify such order being made." This rule itself applied just as much to proceedings under the Landlord and Tenant Act as in any other proceedings commenced by originating summons; and he rejected the argument that the *Borthwick* case had no application to any other subject-matter than an originating summons issued under the Inheritance (Family Provision) Act, 1938. The court had no alternative but to allow the appeal; it was bound, following the *Borthwick* case, to come to the conclusion that here there was no material on which to find that the exception—that was, the very special case—had been established.

ORMEROD and HARMAN, L.JJ., concurred. Appeal allowed.

APPEARANCES: *R. E. Megarry*, Q.C., and *Jeremiah Harman* (*Samuel Sebba & Co.*); *T. J. Sophian* (*Evans, Baker & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law]

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Caravan Sites (Licence Applications) (Scotland) Order, 1960. (S.I. 1960 No. 1554 (S. 77).). 5d.

Corporation of Glasgow (River Teith Compensation Water) Water Order, 1960. (S.I. 1960 No. 1558 (S. 78).) 5d.

Crowborough Water Order, 1960. (S.I. 1960 No. 1574.) 5d.

East Suffolk and Norfolk River Board (Transfer of Powers of the Fromus, Alde and Thorpeness Internal Drainage Board) Order, 1960. (S.I. 1960 No. 1550.) 5d.

East Suffolk and Norfolk River Board (Transfer of Powers of the Upper Alde Internal Drainage Board) Order, 1960. (S.I. 1960 No. 1549.) 5d.

Functions of Traffic Wardens Order, 1960. (S.I. 1960 No. 1582.) 5d. See p. 729, *ante*.

Kenya (Colony and Protectorate) (Non-Domiciled Parties) Divorce Rules, 1960. (S.I. 1960 No. 1555.) 8d.

Legal Aid (Scotland) (Section 5) Amendment (No. 2) Regulations, 1960. (S.I. 1960 No. 1559 (S. 79).) 5d.

Mid-Wessex Water Order, 1960. (S.I. 1960 No. 1553.) 5d.

Pensions Commutation (Amendment) Regulations, 1960. (S.I. 1960 No. 1596.) 5d.

Scarborough Water Order, 1960. (S.I. 1960 No. 1567.) 8d.

Stafford Water Order, 1960. (S.I. 1960 No. 1551.) 8d.

Stopping up of Highways Orders, 1960:—

City and County Borough of Birmingham (No. 8). (S.I. 1960 No. 1544.) 5d.

County of Derby (No. 13). (S.I. 1960 No. 1562.) 5d.

County of Durham (No. 13). (S.I. 1960 No. 1568.) 5d.

County of Durham (No. 15). (S.I. 1960 No. 1569.) 5d.

County of Lancaster (No. 3). (S.I. 1960 No. 1560.) 5d.

City and County Borough of Liverpool (No. 12). (S.I. 1960 No. 1561.) 5d.

London (No. 53). (S.I. 1960 No. 1565.) 5d.

County of Montgomery (No. 1). (S.I. 1960 No. 1571.) 5d.

County Borough of Rotherham (No. 1). (S.I. 1960 No. 1572.) 4d.

County of Somerset (No. 5). (S.I. 1960 No. 1570.) 5d.

County of Surrey (No. 11). (S.I. 1960 No. 1564.) 5d.

County of Sussex, East (No. 2). (S.I. 1960 No. 1563.) 5d.

County of Wilts (No. 10). (S.I. 1960 No. 1566.) 5d.

SELECTED APPOINTED DAYS

September

6th — Pensions Commutation (Amendment) Regulations, 1960. (S.I. 1960 No. 1596.)

12th — Motor Vehicles (Tests) Regulations, 1960. (S.I. 1960 No. 1083.)

15th — Functions of Traffic Wardens Order, 1960. (S.I. 1960 No. 1582.)

19th — National Insurance (Contributions) Amendment (No. 2) Regulations, 1960. (S.I. 1960 No. 1285.)

National Insurance (General Benefit) Amendment Regulations, 1960. (S.I. 1960 No. 1282.)

National Insurance (Hospital In-Patients) Amendment Regulations, 1960. (S.I. 1960 No. 1283.)

National Insurance (Industrial Injuries) (Benefit) Amendment (No. 2) Regulations, 1960. (S.I. 1960 No. 1284.)

National Insurance (Unemployment and Sickness Benefit) Amendment (No. 2) Regulations, 1960. (S.I. 1960 No. 1286.)

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[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

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SURREY (*continued*)

Woking.—HOAR & SANDERSON, F.V.I. Tel. 3263/4. Ten associated Surrey offices.

Woking.—MANN & CO., Est. 1891, Chartered Surveyors Tel. 3800 (6 lines). Offices throughout West Surrey.

Woking.—MOLDRAM, CLARKE & EDGLEY, Chartered Surveyors. Tel. 3419; and at Guildford.

SUSSEX

Angmering-on-Sea, Rustington, Worthing and Storrington.—BERNARD TUCKER & SON, Est. 1890. L. B. Tucker, F.R.I.C.S., F.A.I., G. H. E. Evans, F.A.L.P.A., W. J. Brown, F.A.I. Tels. Rustington 1, Worthing 5708/9, Storrington 535.

Arundel and Rustington.—HEASMAN & PARTNERS. Tel. Arundel 2323, Rustington 900.

Bexhill-on-Sea.—JOHN BRAY & SONS (Est. 1864), Estate Agents, Auctioneers and Valuers, 1 Devonshire Square. Tel. 14.

Bexhill-on-Sea and Cooden.—ERNEST SHEATHER, F.A.I., & PARTNER, Auctioneers and Estate Agents, 14 St. Leonards Road. Tel. 350, 351 and 2280.

Bexhill-on-Sea and Little Common.—RICHES & GRAY (Est. 1883), Chartered Auctioneers and Estate Agents, 25 Sea Road, Bexhill-on-Sea. Tel. 34/5. And at 25 Cooden Sea Road, Little Common. Tel. Cooden 2939.

Brighton.—RAYMOND BEAUMONT, F.R.I.C.S., F.A.I., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 35 East Street. Tel. Brighton 20163.

Brighton.—MELLOR & MELLOR, Chartered Auctioneers and Estate Agents, 110 St. James's Street. Tel. 682910.

Brighton.—H. D. S. STILES & CO., F.R.I.C.S., F.A.I. (special rating diploma), 6 Pavilion Buildings. Tel. Brighton 23244 (4 lines). 10 King's Bench Walk, Temple E.C.4. Tel. Central 5356. 3 The Steyne, Worthing. Tel. Worthing 9192/3.

Brighton.—FRANK STONE & PARTNERS, F.A.L.P.A., 84 Queen's Road. Tel. Brighton 29252/3.

Brighton and Hove.—WILLIAM WILLETT, LTD., Auctioneers and Estate Agents, 52 Church Road, Hove. Tel. Hove 34055. London Office, Sloane Square, S.W.1. Tel. Sloane 8141.

Brighton, Hove and Surrounding Districts.—MAURICE P. HATCHWELL, F.R.I.C.S., F.A.I., Chartered Surveyor, Chartered Auctioneer and Estate Agent, 4 Bartholomews, Brighton, 1. Tel. Brighton 23107.

Brighton and Hove and Surrounding Districts.—C. HORTON LEDGER, F.A.I., Established 1885, Chartered Auctioneer and Estate Agent, Surveyor and Valuer, "Sussex House," 126/7 Western Road, Hove, Sussex. Tel. 71291.

Chichester and Bognor Regis.—WHITEHEAD & WHITEHEAD, Chartered Auctioneers and Estate Agents, South Street, Chichester. Tel. 3031 (5 lines). Station Road, Bognor Regis. Tel. 2237/8.

Crawley.—WH. WOOD, SON & GARDNER, Surveyors and Valuers. Tel. Crawley, 1.

Crowborough.—DONALD BEALE & CO., Auctioneers, Surveyors and Valuers. The Broadway. Tel. Crowborough 3333.

Eastbourne.—FRANK H. BUDD, LTD., Auctioneers, Surveyors, Valuers, 1 Bolton Road. Tel. 1860.

Eastbourne.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 12 Gildredge Road. Tel. Eastbourne 1285.

Eastbourne.—HEFFORD & HOLMES, F.A.I., Chartered Auctioneers and Estate Agents, 51 Gildredge Road. Tel. Eastbourne 7840.

Eastbourne.—OAKDEN & CO., Estate Agents, Auctioneers and Valuers, 24 Cornfield Road. Est. 1897. Tel. 1234/5.

Eastbourne and District.—FARNHAM & CO., Auctioneers, Estate Agents and Valuers, 6 Terminus Road, Eastbourne. Tel. 4433/4/5. Branch at 87 Eastbourne Road, Lower Willingdon, and 4 Grand Parade, Polegate.

East Grinstead.—Messrs. P. J. MAY (P. J. May and A. L. Apthorp, F.R.I.C.S., F.A.I., M.R.San.I.), 2 London Road. Tel. East Grinstead 315/6.

East Grinstead.—TURNER, RUDGE & TURNER, Chartered Surveyors. Tel. East Grinstead 700/1.

Hassocks and Mid-Sussex.—AYLING & STRUDWICK, Chartered Surveyors. Tel. Hassocks 682/3.

Hastings, St. Leonards and East Sussex.—DYER & OVERTON (H. B. Dyer, D.S.O., F.R.I.C.S., F.A.I.; P. R. Hynard, F.R.I.C.S.), Consultant Chartered Surveyors. Estd. 1892. 6-7 Havelock Road, Hastings. Tel. 5661 (3 lines).

Hastings, St. Leonards and East Sussex.—WEST (Godrey, F.R.I.C.S., F.A.I.) & HICKMAN, Surveyors and Valuers, 50 Havelock Road, Hastings. Tel. 6688/9.

Haywards Heath and District.—DAY & SONS, Auctioneers and Surveyors, 115 South Road. Tel. 1580. And at Brighton and Hove.

Haywards Heath and Mid-Sussex.—BRADLEY AND VAUGHAN, Chartered Auctioneers and Estate Agents. Tel. 91.

Horsham.—KING & CHASEMORE, Chartered Surveyors, Auctioneers, Valuers, Land and Estate Agents. Tel. Horsham 3355 (3 lines).

Horsham.—WELLER & CO., Surveyors, Auctioneers, Valuers, Estate Agents. Tel. Horsham 3311. And at Guildford, Cranleigh and Henfield.

(*continued on p. xviii*)

REGISTER OF

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Hove.—DAVID E. DOWLING, F.A.L.P.A., Auctioneer, Surveyor, Valuer & Estate Agent. 75 Church Road, Hove. Tel. Hove 37213 (3 lines).

Hove.—PARSONS SON & BASLEY (W. R. De Silva, F.R.I.C.S., F.A.I.), 173 Church Road, Hove. Tel. 34564.

Hove and District.—WHITLOCK & HEAPS, Incorporated Auctioneers, Estate Agents, Surveyors and Valuers, 65 Sackville Road. Tel. Hove 31822.

Hove, Portslade, Southwick.—DEACON & CO., 11 Station Road, Portslade. Tel. Hove 48440.

Lancing.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 8-14 South Street, Lancing, Sussex. Tel. Lancing 2828.

Lewes and Mid-Sussex.—CLIFFORD DANN, B.Sc., F.R.I.C.S., F.A.I., Fitzroy House, Lewes. Tel. 750. And at Ditchling and Hurstpierpoint.

Seaford.—W. G. F. SWAYNE, F.A.I., Chartered Auctioneer and Estate Agent, Surveyor and Valuer, 3 Clinton Place. Tel. 2144.

Storrington, Pulborough and Billinghurst.—WHITEHEAD & WHITEHEAD amal. with D. Ross & Son, The Square, Storrington (Tel. 40), Swan Corner, Pulborough (Tel. 232/3), High Street, Billinghurst (Tel. 391).

Sussex and Adjoining Counties.—JARVIS & CO., Haywards Heath. Tel. 700 (3 lines).

West Worthing and Goring-by-Sea.—GLOVER & CARTER, F.A.L.P.A., 110 George V Avenue, West Worthing. Tel. 8686/7. And at 6 Montague Place, Worthing. Tel. 6264/5.

Worthing.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 8-14 South Street, Lancing, Sussex. Tel. Lancing 2828.

Worthing.—EYDMANN, STREET & BRIDGE (Est. 1864), 14 Chapel Road. Tel. 4060.

Worthing.—HAWKER & CO., Chartered Surveyors, Chapel Road, Worthing. Tel. Worthing 1136 and 1137.

Worthing.—PATCHING & CO., Est. over a century. Tel. 5000. 5 Chapel Road.

Worthing.—JOHN D. SYMONDS & CO., Chartered Surveyors, Revenue Buildings, Chapel Road. Tel. Worthing 623/4.

WARWICKSHIRE

Birmingham and District.—SHAW, GILBERT & CO., F.A.I., "Newton Chambers," 43 Cannon Street, Birmingham, 2. Midland 4784 (4 lines).

WARWICKSHIRE (*continued*)

Coventry.—GEORGE LOVEITT & SONS (Est. 1843), Auctioneers, Valuers and Estate Agents, 29 Warwick Row. Tel. 3081/2/3/4.

Coventry.—CHAS. B. ODELL & CO. (Est. 1901) Auctioneers, Surveyors, Valuers and Estate Agents, 53 Hertford Street. Tel. 22037 (4 lines).

Leamington Spa and District.—TRUSLOVE & HARRIS, Auctioneers, Valuers, Surveyors. Head Office: 38/40 Warwick Street, Leamington Spa. Tel. 1861 (2 lines).

Rugby and District.—WIGGINS & RUSSELL, Auctioneers, etc., 14 Regent Place, Rugby (Tel. 2548).

Sutton Coldfield.—QUANTRILL SMITH & CO., 4 and 6 High Street. Tel. SUT 4481 (5 lines).

WESTMORLAND

Kendal.—MICHAEL C. L. HODGSON, Auctioneers and Valuers, 10a Highgate. Tel. 1375.

Windermere.—PROCTER & BIRKBECK (Est. 1841), Auctioneers, Lake Road. Tel. 688.

WILTSHIRE

Bath and District and Surrounding Counties.—COWARD, JAMES & CO., incorporating FORTT, HATT & BILLINGS (Est. 1903), Surveyors, Auctioneers and Estate Agents, Special Probate Department. New Bond Street Chambers. 14 New Bond Street, Bath. Tel. Bath 3150, 3584, 4268 and 61360.

Marlborough Area (Wilts, Berks and Hants Borders).—JOHN GERMAN & SON (Est. 1840), Land Agents, Surveyors, Auctioneers and Valuers, Estate Offices, Ramsbury, Nr. Marlborough. Tel. Ramsbury 361/2. And at Ashby-de-la-Zouch, Burton-on-Trent and Derby.

WORCESTERSHIRE

Kidderminster.—CATTELL & YOUNG, 31 Worcester Street. Tel. 3075 and 3077. And also at Droitwich Spa and Tenbury Wells.

Worcester.—BENTLEY, HOBBS & MYTTON, F.A.I., Chartered Auctioneers, etc., 49 Foregate Street, Tel. 5194/5.

YORKSHIRE

Bradford.—NORMAN R. GEE & HEATON, 72/74 Market Street, Chartered Auctioneers and Estate Agents. Tel. 27202 (2 lines). And at Keighley.

YORKSHIRE (*continued*)

Bradford.—DAVID WATERHOUSE & NEPHEWS, F.A.I., Britannia House, Chartered Auctioneers and Estate Agents. Est. 1844. Tel. 22622 (3 lines).

Hull.—EXLEY & SON, F.A.L.P.A. (Incorporating Officer and Field), Valuers, Estate Agents, 70 George Street, Tel. 3399/2.

Leeds.—SPENCER, SON & GILPIN, Chartered Surveyor 2 Wormald Row, Leeds, 2. Tel. 3-0171/2.

Scarborough.—EDWARD HARLAND & SONS, 4 Aberdeen Walk, Scarborough. Tel. 834.

Sheffield.—HENRY SPENCER & SONS, Auctioneers, 4 Paradise Street, Sheffield. Tel. 25206. And at 20 The Square, Retford, Notts. Tel. 531/2. And 91 Bridge Street, Worksop. Tel. 2654.

SOUTH WALES

Cardiff.—DONALD ANSTEE & CO., Chartered Surveyors, Auctioneers and Estate Agents, 91 St. Mary Street, Tel. 30429.

Cardiff.—S. HERN & CRABTREE, Auctioneers and Valuers. Established over a century. 93 St. Mary Street. Tel. 29383.

Cardiff.—J. T. SAUNDERS & SON, Chartered Auctioneers & Estate Agents. Est. 1895. 16 Dumfries Place, Cardiff. Tel. 20234/5, and Windsor Chambers, Penarth. Tel. 22.

Cardiff.—JNO. OLIVER WATKINS & FRANCIS, Chartered Auctioneers, Chartered Surveyors, 11 Dumfries Place. Tel. 33489/90.

Swansea.—E. NOEL HUSBANDS, F.A.I., 139 Walter Road. Tel. 57801.

Swansea.—ASTLEY SAMUEL, LEEDER & SON (Est. 1863), Chartered Surveyors, Estate Agents and Auctioneers, 49 Mansel Street, Swansea. Tel. 55891 (4 lines).

NORTH WALES

Denbighshire and Flintshire.—HARPER WEBB & CO., (incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. 20685.

Wrexham, North Wales and Border Counties.—A. KENT JONES & CO., F.A.I., Chartered Auctioneers and Estate Agents, Surveyors and Valuers. The Estate Offices, 43 Regent Street, Wrexham. Tel. 3483/4.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all

Estate Duty—Deduction for Ground Rent

Q. A testator owns a leasehold house, the ground rent being payable half-yearly *in arrear*. He dies on a date somewhere between two rent days. As regards estate duty, can a deduction from his estate be claimed for the proportion of ground rent from the last previous rent day up to the date of death, even though the rent for the half-year accruing at the latter date is not legally due to the lessor until some time *after* the death? I should have thought the answer to be "no" as I have an idea that the Apportionment Act, 1870, does not bind the Crown—in other words, only payments actually due *on or before* the date of death can be claimed as a deduction for estate duty purposes. I should, however, be grateful for your views.

A. Our immediate reaction was exactly the same as yours but reference to the standard text-books seems to indicate that a deduction may be had. The clearest statement seems to be in Green's Death Duties, 4th ed., p. 431: "In such matters as rent payable under a current tenancy . . . the appropriate deduction is the minimum cost to the estate of terminating the deceased's liability—not necessarily the rent which would accrue up to the date when the tenancy could be determined by notice." Dymond's Death Duties, 13th ed., p. 993, is to the same effect. It is quite clear that no landlord would accept a surrender except on terms of payment of the rent accrued up to the date of the surrender and the executors could not in practice negotiate a surrender until, at the earliest, the rent day next after the death. Therefore we think you should claim the whole of the half-year's rent on that basis, reducing it to the amount accrued up to the death if that should be necessary.

Title—Land Owned by Partnership—Conveyance by Surviving Partner

Q. *A* and *B* were in partnership. The partnership owned certain property which was held by the partners as trustees for sale upon the trusts of the partnership. *A* has died; *B* has acquired the deceased's share from the personal representatives in accordance with an option contained in the partnership deed. *B* has taken an assignment by deed in respect of *A's* interest in the proceeds of sale of the freehold property and this is being adjudicated for stamp duty. This assignment declares that the surviving partner shall hold the deceased partner's interest in the proceeds of sale absolutely. Since the date of the assignment *B* has conveyed the property, reciting merely that he is the absolute owner of the property for an estate in fee simple free from incumbrances. From the point of view of dealing with the legal estate, *B* should have appointed a new trustee to join in the conveyance to give a receipt for the proceeds of sale. It appears therefore that the assignment of the proceeds of sale will have to be put upon the title unless it is possible to prepare a declaration by *B* and the personal representatives of *A* to be dated before the date of the conveyance declaring that *B* holds the property free and discharged from the trust for sale. We can find no precedent for such a declaration, though clearly it must be needed in practice quite frequently. May we please have your general comments upon the propositions we have outlined in this question and your guidance on where such a precedent may be found if it is the correct method of terminating a trust for sale.

A. *A* and *B*, though joint tenants of the legal estate, were as partners tenants in common of the equitable interest in the land. On *A's* death, his legal estate accrued to *B* and his equitable interest vested in his personal representatives. After the assignment by *A's* personal representatives to *B*, the whole legal and equitable interest in the land was in *B*, the trust for sale was then terminated, and *B* was able to pass the legal estate to the purchaser without appointing another trustee: see *Re Cook* [1948] Ch. 212. The problem is to satisfy a subsequent purchaser that *B* was so able, since there is no parallel in trusts for sale to the deed of discharge where there is a strict settlement under the Settled Land Act, 1925. This problem resembles the much-discussed question of a sale by a sole surviving joint tenant, there having been no severance of the equitable joint tenancy, where the difficulty is to prove a negative, namely, that there had been no severance before death, so that the survivorship rule operated. Here there is a positive which can be proved, namely, the assignment to *B*. We agree that this would not be necessary had *B* appointed another trustee to receive the purchase money, the purchaser being protected by s. 23 of the Law of Property Act, 1925. But *B* did not, and since there was an equitable tenancy in common, the survivorship rule could not apply. Therefore we consider that a purchaser must satisfy himself that the whole equitable interest was in *B*. Further, we suggest that a purchaser should also satisfy himself that the assignment to *B*, of which he will have constructive notice, was apparently a fair transaction, since it was a purchase by a trustee of the interest of a beneficiary and would be voidable if *B* had taken advantage of his position. In our opinion, a purchaser can only be satisfied as to the above by production of the assignment to *B;* there is no overreaching conveyance on the title and so the devolution of *A's* equitable interest should be investigated. In the circumstances the assignment to *B* is a link in title and the suggested declaration—probably sufficient if *B* had been a sole surviving equitable joint tenant—ought not to be accepted as a substitute by a purchaser. The above problem would not, of course, arise if the title to the land were registered.

Title—Mortgage—Vacating Receipt Operating as Transfer

Q. In 1948 freehold property was conveyed to *A* and *B* as joint tenants in trust for themselves in equal shares as tenants in common. A building society mortgage was obtained to provide part of the purchase price, the balance being provided by *A* and *B* in equal shares. In 1959 the building society mortgage was repaid, the vacating receipt being in the usual building society form with the added words: "the payment having been made by the within-named *A* and this receipt shall operate as a transfer." *A* now purports to sell the property as mortgagee. What are your views as to acceptance of this title?

A. Our opinion is that the title is good because the receipt operated as a transfer under the Law of Property Act, 1925, s. 115 (2), but we would be reluctant to accept it if there was any alternative. Particularly as *A* was one of the persons entitled to the equity of redemption, it would have been safer to take a transfer: compare the comments in Emmet on Title, 14th ed., vol. 2, p. 263. In the circumstances, and in view of the doubtful effect of some decisions on s. 115 (2), a purchaser's solicitor might feel inclined to argue that the title is too doubtful to be forced on the purchaser: compare Emmet, op. cit., vol. 1, p. 119 et seq.

Marriage—Ceremony—Moment at which Parties Legally Bound

Q. At what *precise* point in the Church of England marriage ceremony do the parties become legally man and wife? There is presumably some one word or act in the ceremony before the utterance or doing of which the parties remain unwed, but after which they are united. Much might depend upon the question whether sudden heart failure (for instance) took place before or after the decisive moment.

A. The parties to a Church of England marriage are legally bound as man and wife immediately after the woman says "I do." The man's "I do" is an offer, conditional on the woman's vow; the woman's "I do" constitutes the fulfilment of that condition and an acceptance of the offer, thus constituting a binding contract. All the rest is mere form—even the signing of the register—and any fault in the rest of the ceremony does not render the marriage invalid.

BOOKS RECEIVED

A Casebook on the Conflict of Laws. By P. R. H. Webb, M.A., LL.B. (Cantab.), and D. J. L. Brown, M.A., LL.B. (Cantab.), of the Inner Temple, Barrister-at-Law. 1960. pp. xlix and (with Index) 478. London: Butterworth & Co. (Publishers), Ltd. £2 12s. 6d. net.

The French Penal Code. (The American Series of Foreign Penal Codes No. 1.) Editor-in-Chief: Gerhard O. W. Mueller, J.D., LL.M., Professor of Law, New York University. 1960. pp. xviii and 158. London: Sweet & Maxwell, Ltd. £1 10s. net.

The Korean Criminal Code. (The American Series of Foreign Penal Codes No. 2.) Editor-in-Chief: Gerhard O. W. Mueller, J.D., LL.M., Professor of Law, New York University. 1960. pp. x and 145. London: Sweet & Maxwell, Ltd. £1 10s. net.

Trade Union Law. Second Edition. By Norman Arthur Citrine, LL.B. (Lond.). With a foreword by the Rt. Hon. Viscount Kilmuir, G.C.V.O., Lord High Chancellor. pp. xliv and (with Index) 656. 1960. London: Stevens & Sons, Ltd. £5 5s. net.

Nationality and Citizenship Laws of the Commonwealth and of the Republic of Ireland. Volume 2. By Clive Parry, LL.D., Barrister-at-Law. pp. xxiv and (with Index) 260. 1960. London: Stevens & Sons, Ltd. £4 4s. net.

Bingham's Motor Claims Cases. Fourth Edition. By Leonard Bingham, Solicitor. pp. xlvii and (with Index) 775. 1960. London: Butterworth & Co. (Publishers), Ltd. £3 2s. 6d. net.

A Guide to Compulsory Purchase and Compensation. Fourth Edition. By R. D. Stewart-Brown, Q.C., M.A. pp. xviii and (with Index) 135. 1960. London: Sweet & Maxwell, Ltd. £1 5s. net.

Fieldhouse's Income Tax Simplified. Twenty-seventh Edition. By H. E. D. Ayling, A.A.C.C.A., A.S.C.T. pp. 79. 1960. Huddersfield: Arthur Fieldhouse, Ltd. 3s. 6d. net.

English Courts of Law. Third Edition. By H. G. Hanbury, Q.C., D.C.L. pp. (with Index) 196. 1960. London: Oxford University Press. 8s. 6d. net.

Damages for Personal Injuries and Death. Second Edition. By John Munkman, LL.B., of the Middle Temple, Barrister-at-Law. pp. xxvii and (with Index) 198. 1960. London: Butterworth & Co. (Publishers), Ltd. £1 10s. net.

Journal of the International Commission of Jurists. Volume 2. Edited by Jean-Flavien Lalive and Norman S. Marsh. pp. 252. 1960. Geneva: International Commission of Jurists. 7s. 6d.

Ranking, Spicer and Pegler's Mercantile Law, incorporating Partnership Law and the Law of Arbitration and Awards. Eleventh Edition. By W. W. Bigg, F.C.A., and R. D. Penfold, LL.B., of Lincoln's Inn, Barrister-at-Law. pp. lv and (with Index) 426. 1960. London: H. F. L. (Publishers), Ltd. £1 5s. net.

The Agricultural Landowner's Handbook on Taxation. Part II. Ninth Edition. Revised by F. G. Holland, Solicitor and Legal Adviser to the Country Landowners' Association. pp. 121. 1960. London: Country Landowners' Association.

CASES REPORTED IN VOLUME 104

1st July to 16th September, 1960

For cases reported up to and including 24th June, see Interim Index

Wills and Bequests

Mr. George Preston Rhodes, solicitor, of Sheffield, left £14,895 net.

Mr. J. M. Rigby, solicitor, of Birkenhead, left £43,373 net.

Correction

Mr. Leslie Franklin Mumford, described as a solicitor under this heading in last week's issue, was, of course, a barrister, having been called by the Inner Temple in 1919.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

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Classified Advertisements must be received by first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

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PUBLIC NOTICES

BOROUGH OF SOUTHGATE

APPOINTMENT OF LEGAL CLERK (UNADMITTED)

Applications are invited for the above appointment in the Town Clerk's Department at a salary in accordance with A.P.T. Grade I (£610 to £765 per annum) plus the appropriate London "Weighting" allowance. Previous Local Government experience although desirable is not essential, but applicants should have good experience in conveyancing and general legal work Forms of application may be obtained from the undersigned to whom they must be returned by not later than 3rd October, 1960

GORDON H. TAYLOR,
Town Clerk.

Southgate Town Hall,
Palmers Green, N.13.

CITY OF CARLISLE

TECHNICAL COLLEGE

Applications are invited for the post of LECTURER IN LAW AND ACCOUNTING to teach these subjects at all levels. Applicants should be graduates or members of an appropriate professional body. The salary is Lecturer grade of the Burnham Technical Report £1,370–£1,550. Application forms and further particulars from the Director of Education, 19 Fisher Street, Carlisle Closing date 4th October, 1960

BOROUGH OF WANSTEAD AND WOODFORD

ASSISTANT SOLICITOR

Applications are invited for the above permanent appointment in Grade A.P.T. V (£1,220–£1,375 p.a. plus London Weighting). Previous local government experience an advantage. Applications stating age, date of admission, qualifications and experience, names and addresses of two referees to me not later than 26th September, 1960.

A. McCARLIE FINDLAY,
Town Clerk.

Municipal Offices,
High Road, E.18.

[AMENDED ADVERTISEMENT]

BOROUGH OF SWINTON AND PENDLEBURY

ASSISTANT SOLICITOR

Applications are invited for the above appointment at a salary within A.P.T. IV and V (£1,065–£1,375), starting salary according to age and experience. Previous local government experience not essential.

Applications stating age, experience, qualifications and two referees must reach the undersigned not later than Wednesday, the 28th September, 1960.

PROVISION OF HOUSING ACCOMMODATION WILL BE CONSIDERED.

J. W. BLOMELEY,
Town Clerk.

Town Hall,
Swinton,
Lancs.

CITY OF LEEDS

APPOINTMENT OF LEGAL ASSISTANT (UNADMITTED)

Applications are invited for this appointment at a salary within grade A.P.T. II (£765–£880) according to ability and experience. Candidates should possess a sound practical knowledge of conveyancing and compulsory purchase order procedure.

Applications stating age, education, experience, previous appointments held, together with the names of two referees should be sent to the Town Clerk, Civic Hall, Leeds, 1, before the 27th September, 1960.

COUNTY BOROUGH OF SOUTH SHIELDS

SECOND ASSISTANT SOLICITOR

Applications are invited for this appointment from Solicitors. Salary A.P.T. IV £1,065–£1,220 commencing point in accordance with ability and experience. N.J.C. Conditions of Service; post permanent and superannuable. Local Government experience is not essential. Duties include advocacy and attendance at Committees. As the Council is engaged in a number of large re-development schemes this post offers the opportunity of gaining wide experience of local government work. Applications with names of two referees to reach the Town Clerk, Town Hall, South Shields, by 27th September, 1960.

TRENT RIVER BOARD

APPOINTMENT OF LEGAL ASSISTANT

Applications are invited for the appointment of a Legal Assistant (Unadmitted) at a salary within A.P.T. Grades II–III (£765–£1,065 per annum) of the National Scheme of Conditions of Service for Local Government Officers.

Local Government experience is not essential but applicants must be able to carry through conveyancing and allied transactions with minimum supervision and should have had experience in general legal work.

Forms of Application, together with Conditions of Service, may be obtained from the undersigned at 206 Derby Road, Nottingham, and should be returned, duly completed, not later than the 30th September, 1960.

IAN DRUMMOND,
Clerk of the Board.

BIRMINGHAM REGIONAL HOSPITAL BOARD

APPOINTMENT OF ASSISTANT SOLICITOR

Assistant Solicitor required in the office of the Board's Legal Adviser. Excellent opportunity for newly qualified solicitor to obtain experience. Salary on scale £1,020—£1,260 per annum. Superannuable. Applications should be submitted to the undersigned, stating age and experience and naming two referees by 3rd October.

W. F. NEWSTEAD,
Secretary to to the Board.

10 Augustus Road,
Edgbaston,
Birmingham, 15.

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WATFORD.—Conveyancing clerk required for busy practice. Write giving details of previous experience and suggested salary.—Box 7003, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

continued on p. xx

★ Classified Advertisements ★

continued from p. xix

APPOINTMENTS VACANT—*continued*

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continued on p. xxi

Classified Advertisements

continued from p. xx

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continued on p. xxii

Classified Advertisements

continued from p. xxi

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